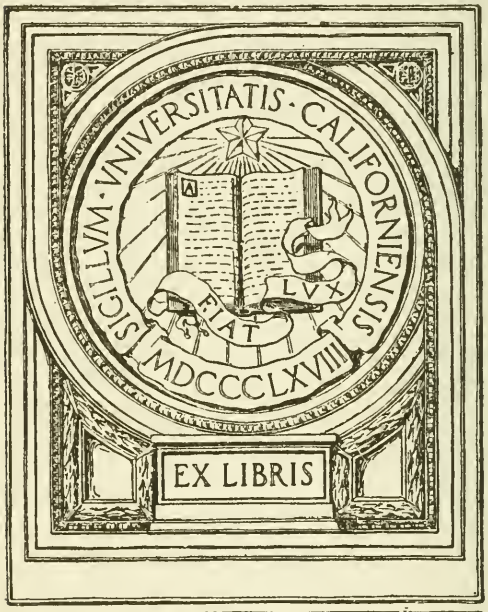

MANUAL OF FORENSIC QUOTATIONS

John W. Griggs

MANUAL OF
FORENSIC QUOTATIONS

By
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and
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Introduction
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INTRODUCTION

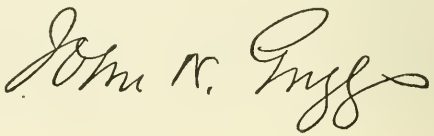
FORENSIC eloquence is the most popular, and at the same time the most evanescent, of all public speech. That so few of the great speeches of legal advocates have been preserved is not due to their lack of those inherent qualities which make eloquence live, but rather to the temporary occasion and the transient uses for which they are made. There is no Congressional Record to embody in perpetual form the dialogue and repartee of the court-room, or to spread before the public in legible character the speeches of counsel to the gentlemen of the jury. Rarely are legal addresses in jury cases prepared in advance, and, being the extemporaneous outpouring of the immediate thought and feeling of the speaker, there exists no copy to which posterity can go. Fortunately, however, not all the great speeches of great advocates have been lost upon the air of their first deliverance. The speeches of Demosthenes and Cicero are most valued treasures in classic literature, and models of the art of advocacy as well.

It is the English-speaking Bar, however, that has abounded most in examples of brilliant and moving eloquence. The English advocate and his American brother belong to a system of jurisprudence in which the functions of moving speech have the largest play. Their duties call them to the maintenance and defense of life and liberty, of property and reputation.

The dearest and most valuable rights of mankind are submitted to the arbitrament of jury trial. Jurors are men "of the vicinage"; in the language of the ancient

venire, *liberi et legales homines*—men of ordinary every-day capacity, subject to all the prejudices, to all the passions, to all the emotions of the human mind. They can be reasoned with; they can be inflamed, made indignant or merciful, generous or severe, unjust or righteous in their verdicts, as they are moved to one sentiment or another by the art of the advocate who is a master of eloquence. It is to the jury that the contesting litigants mutually appeal for the final adjustment of their conflicting claims. So that the lawyer who speaks in such a case is no mere academic orator, aiming to produce fine sentences and swelling periods that will look well in print next day, but one who has a direct and single object before him—to convince the judgment and secure the assent of the twelve men in the jury-box to the correctness of his client's cause. Here, then, we might expect, and here, in fact, we shall find, eloquence in its least artificial form—where reasoning is most persuasive, where emotion is most real, and where all the arts of rhetoric, learning, wit, humor, irony, sarcasm, indignation, denunciation are employed in the most genuine and natural manner.

To preserve these flitting and evanescent outbursts of eloquence is a worthy and desirable thing. Many a great lawyer of the past, who would otherwise remain mute and inglorious, will thus speak on to future generations in the glowing words with which he erstwhile enthralled the minds of his audience in some rural courthouse as he reasoned of law, of justice, of righteousness, and of the judgments of this world and of the world to come.



LIST OF COUNSEL AND AUTHORITIES QUOTED

Barnes, William Sanford
Beach, William A.
Beaconsfield, Lord
Bentham, Jeremy
Beveridge, A. J.
Black, Jeremiah S.
Blackburn, C. S.
Bradish, Luther
Brady, James T.
Bright, John
Brougham, Lord
Brown, David Paul
Brown, Thomas
Burke, Edmund
Burke, Frank B.
Butler, Benjamin F.
Calhoun, John C.
Carrington, Edward C.
Chambers, F. N.
Cheever, Henry M.
Choate, Joseph H.
Choate, Rufus
Clay, Henry
Conkling, Roscoe
Corwin, Thomas
Crittenden, John J.
Curran, John Philpot
Davis, Ex-Governor,
Depew, Chauncey M.
Dexter, Wert
Dickinson, Daniel S.
Douglas, Stephen A.
Elam, John B.
Erskine, Thomas
Evarts, William M.
Field, David Dudley
Forsythe, George D.
Fox, Charles James,
Garfield, James A.
Gordon, J. W.
Graham, George S.
Graham, John
Hadley, Cash C.
Hamilton, Alexander
Harrison, Benjamin
Hart, Professor A. B.
Henry, Patrick
Hoar, Bartholomew
Hughes, James
Ingalls, John J.
Ingersoll, Robert G.
Jackson, Andrew

PREFACE

Much exciting and romantic interest attaches to certain modern jury trials, but it does not fall within the plan and scope of this work to tell the story of each case or to give technical analyses of the arguments of counsel. Before the era of stenography many eloquent speeches were lost—no record of them remains—though the fame of the orator may survive. But, fortunately, some of the best sayings of the most illustrious pleaders have been preserved, as for instance, those of Curran, Lord Erskine, Lord Chatham, Burke, Sir James Mackintosh, Patrick Henry, William Wirt, Webster, Choate, Seward, David Paul Brown, O'Conor, Graham, Stanton, Evarts, Beach, Butler, Voorhees, Van Arman, Judge Black, Lothrop, Ryan, Porter, Tremain, Conkling, Benjamin Harrison, and many others whose fervid appeals and trained genius before courts and juries have made the literature of the Anglic bar superior to any other of its kind in all the world. Indeed, it is the intellectual, ethical and humanistic side of the law and its interpreters that is chiefly offered to the reader in these pages. It is meant to be a book for all who love great truths said in a great way, and not a formal digest for lawyers. Yet to the latter it should not come amiss in the matter of illustrative passages or of suggestions upon which they might well model their own thoughts. For a like reason it should be serviceable to editors, writers, preachers, and public men.

It is a well-attested fact that the most powerful and affecting forensic eloquence has been heard in criminal and civil trials. In dry legal arguments, before appellate courts, the lawyer seldom if ever rises to a Ciceronian standard of utterance, and, if he did, he would doubtless make himself ridiculous. To discuss abstract questions of law in a grandiloquent manner, or to attempt an *impassioned* presentment of commonplaces would be a very good way for an advocate to defeat his own cause. But in a criminal or civil case there may be favorable chances for the gifted lawyer, either in behalf of the people or plaintiff, or the defendant, to play upon the emotions and excite the sympathies of the jury, with the magic power of words.

Many persons have long felt the need of a work wherein might be found the gist of great thoughts uttered by leading members of the bar, in famous and important criminal and civil trials. To meet this distinct demand the compilers have culled from many speeches made in the courts of England and the United States, using also a few extracts from addresses not delivered in a court-room, but having some coordinate merit that entitles them to a place.

Wherever possible, personal allusions to the defendants made by the respective attorneys, have been eliminated, and the guiding principle has been to retain the broad legal propositions, and, under classified headings, those sublime conclusions and fine ethics by the knowledge of which the average man may the more deeply appreciate his rights and privileges, the more clearly understand his relations to society, and be the better equipped to fulfill the duties of citizenship. Also are given various maxims of the old Roman and of the English Law, which still appeal to human reason, as they did centuries ago, and

which as criteria are so perfect and popular that they never will be discarded while man exists on the earth.

It is true, the processes of argument and the conduct of cases have changed in the last hundred years, but the basic conceptions of right and wrong have not altered. Says George Perry Morris: "Joseph Choate dare not deal with judges or juries as did Rufus Choate. Rhetoric and imagination and dogmatism are at a discount now at the bar, in the pulpit, on the hustings, in the halls of Congress." But if the modern spirit prefers facts to theories, we nevertheless must look to these dead and gone Titans of the legal profession for the best quality of wisdom and the highest grade of oratory.

Variety of expression has not been sought at the expense of quality of thought. The purpose has been to make special selections which elucidate the given subject briefly and clearly. In some cases, a mere suggestion of the analysis or argument is given and the reader, thus thrown on his own resources of logic, may pursue for himself a perhaps profitable line of reasoning. Or if his interest be piqued to know all the lawyer said, the full speech, in most instances, may be easily obtained.

To garner those merely pompous and melodramatic sayings that have been heard in many notorious trials and lawsuits in England and America has not been the aim in preparing this volume. Such a task would be stupendous, not to say devoid of practical value. The excerpts here collected all have a bearing on the deathless principles of English or American law and jurisprudence, and are reinforced by the many legal maxims of Justinian and others.

A notable feature of the collection, which should be appreciated by young students and others, is the series of portraits, some of them rare ones, of eminent advocates,

who have taken part in the criminal and civil trials referred to herein. It should be added that some of these men whose portraits are given were essentially jurists, with no desire for ordinary criminal practice, but who were occasionally induced to identify themselves with some extraordinary case involving—let us say—the good of humanity.

Manual of Forensic Quotations

ACCOMPLICES.

Gentlemen, it must be remembered, in the first place, that accomplices in murder cases are not generally selected from among the honorable; they are taken from the scenes of blood. It is not commonly to be expected that they are men of high character or conscience. In the very nature of things, he whose knowledge of crime is such that it involves a degree of moral guilt on his own part—in the very nature of things, I say, that man is not an angel. But you have got to take him as he is. You have got to go to the source of natural information.

State's Attorney Frank M. Nye, in People v. Hayward, Minneapolis, Dec. 1895.

ACCUSERS AND ACCUSATION.

To him who would say that this man is a hypocrite, I would say, as He said, "Let him that is without sin cast the first stone." What man, even a preacher, could have his life bared like this unfortunate man, and none say to him, "Thou hypocrite!"

Col. H. C. Jones, in People v. Holland, Charlotte, N. C. May 14, 1895.

ACCUSATION DEFEATED.

And if your Honors are still unconvinced, regard the spotless character of the man you judge. It is an unsoiled mantle of purity wrapping its protecting folds

around his whole life. An amiable and accomplished gentleman, endeared to his friends; an untarnished merchant and officer, honored by the world; an ardent, but stainless politician, respected by his adversaries, he appeals to the congenial instincts of his judges. Had guilt been proven, even his unblemished name would not save him; but, in the sometimes subtle entanglement of malicious circumstance encompassing the good man with shadows, he may confidently and proudly point to his blameless reputation. I repel the idea that there is an atom of proof from which the foulest hate can hatch suspicion. But if there were, I meet it with an invulnerable character and defy its venom. Once, at least, it saves from doubtful circumstance. It can but once; for even defeated accusation leaves its enduring taint. The memory of this trial will cling to Colonel North, ever supplying malice with its poison. Your judgment may acquit him, but he has been suspected and accused, and that, with censorious rumor, is guilt.

William A. Beach, in case of People v. Samuel North et al. (charged with tampering with soldiers' votes) before a military commission, Washington, D. C. Feb'y, 1865.

A DEMAND OF VERDICT OF ACQUITTAL.

No, gentlemen; but I rise with what of law, of conscience, of justice, and of constitution, there exists within this realm, at my back, and, standing in front of that great and powerful alliance, I *demand* a verdict of acquittal for my client.

John P. Curran, Trial of Patrick Finney for high treason, Dublin, Jan. 16, 1798.

THE EFFECTS OF AN ACQUITTAL.

I know, from recent experience, that an acquittal, how-

ever honorable, does not wipe off the aspersion which such charges cast on mens' characters.

John P. Curran, Trial of Drogheda Defenders, Drogheda, April 23, 1794.

ACQUITTAL TO BE MADE ON DOUBT.

Hear and weigh the evidence. If you doubt its truth, acquit without hesitation. By the laws of every country, because by those of eternal justice, doubt and acquittal are synonymous terms.

John P. Curran, Trial of Sir Henry Hayes, Cork, April 16, 1801.

TIME FOR ACTION.

It is now I ought to have strength—it is now I ought to have energy and voice. But I have none; I am like the unfortunate state of the country—perhaps, like you. This is the time in which I ought to speak, if I can, or be dumb for ever; in which, if you do not speak as *you* ought, *you* ought to be dumb for ever.

John P. Curran, Trial of Peter Finnerly, publisher of the "Press," (Dublin) Dec. 22, 1797.

ADULTERY.

What, then, is the act of adultery? It cannot be limited to the fleeting moment of sexual contact; that would be a mockery; for then the adulterer would ever escape. But law and reason mock not human nature with any such vain absurdity. The act of adultery, like that of murder, is supposed to include every proximate act in furtherance of, and as a means to, the consummation of the wife's pollution. This is an established principle in American and English law, established from the time of Lord Stowell, as will be hereafter shown. If the adulterer be found in the husband's bed, he is taken in the act, within

the meaning of the law, as if he was found in the wife's arms. If he provide a place for the express purpose of committing adultery with another man's wife, and be found leading her, accompanying her, or following her to that place for that purpose, he is taken in the act. If he not only provides, but habitually keeps such a place, and is accustomed by preconcerted signals to entice the wife from the husband's house, to besiege her in the streets, to accompany him to that vile den; and if, after giving such preconcerted signal, he be found watching her, spy-glass in hand, and lying in wait around a husband's house, that the wife may join him for that guilty purpose, he is taken in the act.

Edwin M. Stanton, in defense of Hon. Daniel E. Sickles, indicted for the murder of Philip Barton Key, Washington, D. C. April 23, 1859.

With this we start. It is the crime of adultery, Mr. Foreman. It is an intentional and deliberate surrender of the person unlawfully to another. No surprise at the window, no sudden placing of the hand within the bosom, instantly and by a flood of tears repelled, is adultery. There must be some intentional, intelligent, voluntary and consummated surrender of the body; and this established by evidence clear and undoubted, or there is no case.

Rufus Choate, in behalf of Helen Maria Dalton, in the Dalton divorce case, Boston, May, 1856.

ADULTERY NOT INFERRED FROM OPPORTUNITY.

They seem to be of the opinion that where there is unlawful love and an opportunity, adultery is necessary as a sort of chemical result. Do they forget that there is such a thing as free-will, such a thing

as conscience, such a thing as shame, such a thing as a point at which to stop and a point from which to go back? They forget the inherent virtue that pervades the nature of woman. They forget such a word as that. And therefore I say that the doctrine is old, poor, monkish, artificial, and has never been adopted in this State, and never, as my learned brother will present it to you, in any country; for I believe the work holds that if it turns out that the opportunity did not as a matter of fact carry the parties to the guilt, there is an end of it. I contend that there is no divorce to be granted for loving or for having an opportunity, if the parties do not indulge.

Rufus Choate, in Dalton divorce case.

SLAYING THE ADULTERER NO CRIME UNDER THE LAW.

There were four epochs in which killing in such cases went unpunished:—it was justified under the Jewish dispensation, by the laws of Solon, by those of the Roman empire, and by the Gothic institutions which have given shape to our own. By the mere force of frequent repetition in the books, of Manning's case, it has come to be believed that a man must stand by the bed of his wife and behold the adulterer polluting his bed, and not raise his hand against him. From the time of Edward II. to King Charles—three hundred and sixty odd years—no word is to be found in the common law, no word imputing guilt to the slayer of the violator of the chastity of his wife. This right to kill was never denied till now. There is one fact I have never before seen related, except by Paley, that by the laws of the commonwealth, immediately preceding the time of Charles, adultery was punished by death.

Mr. Carlisle.—Blackstone mentioned it. In 1650, at

a period before the judgment in Manning's case, it was punishable by death.

Mr. Stanton.—The age of Charles was an age of adultery and gross corruption; the palace was filled with harlots and thronged with adulterers and adulteresses; the judges were the panderers, partakers and protectors of the corruptions of the age, and the same court which adjudged the husband to be a felon for slaying the adulterer on his bed, fined and sent jurors to prison for refusing to find verdicts in accordance with its instructions. It was the same court which hunted Quakers, Catholics and Nonconformists to death; the same court which persecuted John Howe and Richard Baxter, and which sent to the pillory and prison John Bunyan for preaching the gospel to the poor.

Edwin M. Stanton, Sickles' Trial, Washington, D. C. April 23, 1859.

WIFE'S CONSENT IN ADULTERY.

I claim, then, on this proposition, that the expression or rule of the common law in regard to the consent of the wife had its origin in a state of manners and of social life that do not exist in this country, and that that rule is not applicable here. It is founded on the principle that the wife's consent can qualify the degree of the adulterer's guilt, and determines the husband to be a criminal. In American society, there is freedom from restraint and supervision that exists nowhere else, and this results from various causes: husbands, fathers, and brothers devote a large share of time to the cares of life and to the duties of providing for the family, during which time the female portion of the family are left to themselves without protection. The frequent changes of habitation and the equality of our social condition lead to a frankness of inter-

course which requires, for the sanctity of the home and the security of the marriage bed, a rigorous personal responsibility to the death. The peculiar conditions of society in this District are also to be noted before any principle like that of social law can be introduced.

Edwin M. Stanton, Sickles' Trial, Washington, D. C. April 23, 1859.

THE ADVOCATE.

The struggles, in the history of the world, to have in criminal trials an honest judiciary, a fearless jury, and a faithful advocate, disclose a great deal of wrong and suffering inflicted on advocates silenced by force, trembling at the bar where they ought to be utterly immovable in the discharge of their duty—on juries fined and imprisoned, and kept lying in dungeons for years, because they dared, in State prosecutions, to find verdicts against the direction of the court. The provisions of our own Constitution, which secure to men trial by jury and all the rights incident to that sacred and invaluable privilege, are the history of wrong against which those provisions are intended to guard in the future.

James T. Brady, in defense of the "Savannah Privateers," indicted for piracy, New York, Oct., 1861.

It is the mighty theme, and not the inconsiderable advocate, that can excite interest in the hearer.

John Philpot Curran, Trial of A. H. Rowan, Dublin, Jan'y 29, 1794.

DUTY OF AN ADVOCATE.

If an advocate entertains sentiments injurious to the defense he is engaged in, he is not only justified but bound in duty, to conceal them; so, on the other hand, if his own genuine sentiments, or anything connected with his char-

acter or situation, can add strength to his professional assistance, he is bound to throw them into the scale.

Lord Erskine, in defense of Thomas Paine, tried for libel, Court of King's Bench, Guildhall, Dec. 18, 1792.

Deterred neither by misrepresentation nor unpopularity, the advocate, true to his oath and office in proportion as such difficulties surround him, will rise with mightier effort to vindicate by his courage and learning, in behalf of his client, both his honor and his profession.

Chauncey M. Depew, Address before the Columbia Law School, May 17, 1882.

The advocate is of very little use in the days of prosperity and peace, in the periods of repose, in protecting your property, or aiding you to recover your rights of a civil nature. It is only when public opinion, or the strong power of government, the formidable array of influence, the force of a nation, or the fury of a multitude, is directed against you, that the advocate is of any use.

James T. Brady, in case of Savannah Privateers.

AGENT AND PRINCIPAL.

Qui per alium facit per seipsum facere videtur.

He who does an act through the medium of another party is in law considered as doing it himself.

Respondeat superior.

Let the principal be held responsible.

ALIBI.

The frailest plank I ever saw, the weakest reed on which to lean is this one—to seek an acquittal on a transposed roll-call and an alibi unsupported.

District Attorney William S. Barnes, in People v. Durant, San Francisco, Nov. 12, 1895.

ALLEGIANCE TO GOVERNMENT.

Nemo patriam in qua natus est exuere nec ligeantiæ debitum ejurare possit.

A man cannot abjure his native country nor the allegiance which he owes to his Sovereign.

LATENT AMBIGUITY.

Ambiguitas verborum latens verificatione suppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur.

Latent ambiguity may be supplied by evidence; for an ambiguity which arises by proof of an extrinsic fact may, in the same manner, be removed.

ANCESTRY.

A nation, like a man, may grow spare and threadbare from leaning against a family tree. Our country is not what our fathers made it, but what the children of our fathers shall make it.

Professor A. B. Hart, Address at Boston, Mass.

A PERFECT ARGUMENT.

To attempt to add anything to the arguments of that paper, would be to attempt to gild refined gold—to paint the lily—to throw a perfume on the violet—to smooth the ice—or add another hue unto the rainbow—in every aspect of it, wasteful and ridiculous excess.

John Randolph, in the House of Representatives, 1824, *on the U. S. Bank Bill, and referring to James Madison's report to the legislature of Virginia denying the constitutional right of government to charter the Bank of the United States.*

A SUICIDAL ARGUMENT.

But, sir, I must still maintain that the argument of the gentleman is suicidal—he has fairly worked the equation,

and one half of his argument is a complete and conclusive answer to the other.

John Randolph, in the House of Representatives, April 12, 1824, in reply to Representative McLean, of Delaware, on the tariff question.

ARGUMENTS FORCIBLE IN LAW.

Argumentum ab inconvenienti plurimum valet in lege.

An argument drawn from inconvenience is forcible in law.

ASSIGNEES.

Assignatus utitur jure auctoris.

The assignee is clothed with the rights of his principal.

ATTORNEYS AND THEIR CLIENTS.

It is the privilege, it is the obligation, of those who have to defend a client on a trial for his life, to exert every force, and to call forth every resource, that zeal, and genius, and sagacity can suggest. It is an indulgence in favor of life—it has the sanction of usage—it has the permission of humanity; and the man who should linger one single step behind the most advanced limit of that privilege, and should fail to exercise every talent that heaven had given him, in that defense, would be guilty of a mean desertion of his duty, and an abandonment of his client.

John P. Curran, Trial of Sir Henry Hayes, for abduction of Miss Pike, Cork, April 16, 1801.

ATTORNEYS' DUTIES.

I would have tried this cause had no fee or reward attended it beyond the consciousness and the satisfaction which every lawyer must feel when he proves that he has the courage and the virtue to maintain the rights of his client and himself against popular clamor, and despite the pens of libelers, whether they write from malice, or

only for a railroad pass, or for hush-money, or black-mail.

In England a barrister, offered a retainer, who should refuse it or throw up the case for fear that obloquy might fall on him for doing his duty, would forfeit his prestige and standing as a member of the bar. If the retainer were against the Crown, and he should falter, he would be held in meaner estimation than if he refused to appear against the humblest peasant in all the realm.

Roscoe Conkling, in N. Y. Central R. R. tax case, July, 1874.

The case and the topics which are inseparable from it are brought here by the prosecutor. Here I find them, and here it is my duty to deal with them, as the interests of Mr. Peltier seem to me to require. He by his choice and confidence, has cast on me a very arduous duty, which I could not decline, and which I can still less betray. He has a right to expect from me a faithful, a zealous, and a fearless defense; and this, his just expectation, according to the measure of my humble abilities, shall be fulfilled.

Sir James Mackintosh, in behalf of Jean Peltier, indicted for a libel of Napoleon Bonaparte, London, Feb'y 21, 1803.

AVARICE.

Avarice as a base and sordid passion, stands high in the dark catalogue of man's depravity. Like jealousy, it "makes the meat it feeds on;" like the kine of Pharaoh's vision, the more it consumes the more lean and hungry it becomes. Unlike all other propensities, it seeks no intervals of abstinence to edge the appetite; it chills and withers the social affections of the heart, and freezes the "genial current of the soul."

Daniel S. Dickinson, on the Repeal of the Usury Laws, New York Senate, Feb'y 10, 1837.

AVARICE AND CRIME.

We are all wicked. We are all wickeder than we dare to own. We are all susceptible to the love of money. And what is there so common in the weakness of humanity as to take the poor man, the plodder, the dollar-and-a-quarter or the dollar-and-a-half-a-day man, who works twelve or eighteen hours a day, when the serpent of avarice and deception shall enter his quiet nest, and tell him that money can be made easier, that he is foolish? How natural and how easy it is for men to listen to these things.

State's Attorney Frank M. Nye, at Minneapolis, in People v. Hayward, Dec., 1895.

BELIEF AND KNOWLEDGE.

You and I believe in the great and merciful Father in heaven, the creator of the boundless universe, yet we have not seen Him, nor hath any man and lived. We believe that the blessed Savior walked the hills and plains of Judea, and died to redeem the souls of men, but our eyes did not behold the majesty of His face, nor our ears drink in the deep and melancholy music of His voice. We believe because we have faith in the sources of our information. We have been told, that is all. The testimony of the ages is ours. . . . The history of the whole human race forces us to exclaim, "How little is known, and how much is believed." The world of faith is wide, the world of knowledge is narrow. What we think we know best depends mainly upon the credibility of those who have narrated to us the facts.

Daniel W. Voorhees, in defense of H. C. Black, Frederick City, Md., April 23, 1871.

BIGOTRY OF PROTESTANTS.

Are you to find your verdict upon the bigotry of ancient Protestantism? Search your minds with care, jurors, and

find out if you are not asked to assume or presume something with regard to a Catholic priest, which you would not assume with regard to a Protestant clergyman. You have a right to say to the District Attorney of this county: "Stand back, sir." And say: "Do not ask me to fall back upon the bugbear of my early instruction and say that a Catholic must be guilty." . . . I know what Protestant bigotry is. I full well know the ideas instilled into the minds of young Protestants, for I was brought up under the eaves of a Protestant Church and my father was a minister. YOU know what was preached to you when you were young ones.

George Raines, for defendant in People v. Cronin, at Rochester, Dec. 20, 1895.

BOY OR MAN.

This boy! When does a boy become a man? Is it by years, experience, or the manner of life he has led? The law fixes a time when a man may become a criminal and be held responsible for crime, and that is when he is fourteen years old; not thirty-three and not thirty-nine. He is supposed then to know the consequence of his act, and knowing it he is held responsible for it.

U. S. District Attorney Frank B. Burke, for prosecution in People v. Haughey, Indianapolis, Ind.

BROTHER AND SISTER.

The pride and glory of the family is its band of brothers and sisters. Sprung from the same love, with the same blood coursing in their veins, their hearts are bound together by a cord which death cannot sever; for, wide asunder as may be the graves of a household, varied as may be their life here on earth, when life's rough ocean is passed, sooner or later they will rejoice on the heavenly coast—a family in heaven. But when the adulterer puts

a young wife asunder from her husband, her child is cut off from all kindred fellowship. The companionship and protection of a brother of the same blood can never be hers. No sister of the same blood can ever share her sorrow or her joy. Alone, thenceforth, she must journey through life, bowed down with a mother's shame. Nor does the evil stop here. It reaches up to the aged and venerable parents of the wretched husband and of the ruined wife, and stretches around to the circle of relatives and friends that cluster around every hearth.

Edwin M. Stanton, in Sickles' Trial.

BURDEN OF PROOF IN CRIMINAL CASE.

The burden is upon the State to satisfy you beyond all reasonable doubt of the guilt of the accused—he is not called upon to establish his innocence. It is not enough that the State has raised suspicion; it is not enough that there is a mystery. The State cannot ask for a conviction upon a mystery; the State can only ask a conviction, when it has dispelled all mystery and established his guilt beyond a reasonable doubt.

Charles W. Smith, for defense in People v. Hinshaw, Danville, Ind., Sept. 14, 1895.

BURDEN SUSTAINED BY BENEFITS.

Qui sentit commodum sentire debet et onus.

He who derives advantage ought to sustain the burden.

MODERN BANK BURGLARY.

The charge against this defendant is not that he entered the Indianapolis National Bank in the night time, that he used force to open the doors that secured and concealed its credits and assets; not that in the rôle that he played he was less an enemy to society, less an enemy to the security of property—but that he aided in the modern way

of burglarizing a bank as much as if he had stood upon the corner at the dead hour of midnight to sound the alarm to his partners in crime who were working their way to the contents of that bank, should an officer of the law approach to disturb them.

Men in early times, to secure wealth, to secure the property of others, banded themselves together as robbers and brigands. They were pursued as outlaws and a price was fixed upon their heads. In the advancement of society, the development of civilization and the better safeguarding of treasure, there came into existence burglars who, in the night-time or in the day-time, by force and steel and power, drilled their way into the banks or the safety deposits of the country, and carried away the wealth that was therein. These men took their lives in their hands. They laid their lives upon the altar of their profit. But to-day, what was highway robbery and burglary before, becomes, perchance, an exchange of credits, a bridging over of chasms of adversity, though the result in all cases is the same. This is a crime long upon the statute books.

U. S. District Attorney Frank B. Burke, for prosecution in People v. Haughey, Indianapolis, Ind.

A PERFECT CASE.

So, here have you to combine and place in due order the testimony in the case intrusted to your keeping. Witnesses have brought to you their facts, their observation, their experience. Separated facts, each of no great significance in itself, are borne to you by many persons. The structure you are building depends upon the truthfulness, the discernment, the motives of no one man or woman. Each part fits with its companion part without doubt, hesitancy or jar. Slowly has this monument of patient investigation and tireless search been rising, each day

stronger, each day more irresistible, as it has neared completion. There is weakness nowhere. There is on every side and at all heights that abiding conviction, that moral certainty which the law says must bind together and cement the entire frame and substance of the case, and brings the candid and honest mind to the conclusion that this defendant, and none other, was the slayer of Blanche Lamont. The structure which has thus been builded, cemented with a mass of indisputable facts consistent with his guilt, and absolutely inconsistent with any reasonable hypothesis of his innocence, is now before you. It is for you to finish it. Will you crown it with the sublime form of justice, robed in her garb of law, her forehead bound with the lambent purity of truth's white diadem, and in her hand the flaming sword which punishes the doer of unutterable sin; or will you leave it to the usurpation of an incarnate hell, to a grinning and deriding fiend, mocking at the paralysis of human intelligence, and hugging to his devil's breast the crime of this dreadful murder, perpetrated under the shelter of a church of God, and saturated with unspeakable and measureless depravity?

Gentlemen of the jury, so far as the People of the State of California are concerned in the exposition of this most tragic story, the case is with you.

District Attorney William S. Barnes, in People v. Durant, San Francisco, Nov. 12, 1895.

PREPARATION OF A CASE.

If the court please, I have endeavored to give to this case such labor and care as its inherent importance, and the attention which was accorded it by the court, demanded. I have made what research I could to discover the law that was applicable. So far as the facts in the

case were concerned, I have been compelled by force of old habits to wait until the trial was had, and the testimony developed from the witness stand.

Frederick W. Lehman, in Pulitzer v. Jones, St. Louis, Mo., Jan. 16, 1896.

THE IMMEDIATE CAUSE IN LAW.

In jure, non remota causa, sed proxima spectatur.

In law the immediate, not the remote, cause of any event is regarded.

CERTAINTY IN LAW.

Certum est quod certum reddi potest.

That is sufficiently certain which can be made certain.

TRUE AND LEGAL CERTAINTY.

Nimia subtilitas in jure reprobatur, et talis certitudo certitudinem confundit.

The law does not allow of captious and strained intendment, for such nice pretence of certainty confounds true and legal certainty.

CHALLENGES.

But when men are deadly foes, when their hostility is open and proclaimed, when unpardonable wrongs have been given and received, when their blood is full of wrath, when the insulter is armed with weapons of death—then the intentional touch in passing is a threat, and a challenge of the deepest and most sinister import.

Daniel W. Voorhees, in defense of Harry C. Black.

CHALLENGES FOR FAVOR.

Favor is not cause of principal challenge, which, if put upon a pleading, would conclude the party. Favor is that which makes the man, in vulgar parlance, unfit to try the question.

John P. Curran, Trial of A. H. Rowan, Jan. 29, 1794.

CHANGES.

There have been changes, too, among the unfortunate men whom I have defended. The sound of the hammer has died away in the workshops of some; the harvests have ripened and wasted in the fields of others. Want, and fear and sorrow have entered into all their dwellings. Their own rugged forms have drooped, their sunburnt brows blanched, and their hands have become soft to the pressure of friendship as yours or mine. One of them—a vagrant boy—whom I found imprisoned here for a few extravagant words, that, perhaps, he never uttered, has pined away and died. Another, he who was feared, hated and loved most of all, has fallen in the vigor of life, "hacked down, his thick, summer leaves all faded."

William H. Seward, in Conspiracy Case, Detroit, Mich., Sept., 1851.

CHARACTER.

When Prometheus was chained to the rock, it was a vulture and not an eagle that struck him.

Alfred P. Thom, in Massey v. Pilot, Norfolk, Va., June 27, 1895.

Every defendant is presumed to have a good character, and so long as he puts in no evidence on the subject, the prosecution cannot attack him.

George Raines, in People v. Chatfield, Rochester, N. Y., Feb'y 28, 1896.

They do not reflect that every character has a natural station, from which it cannot be effectually degraded, and beyond which it cannot be raised by the bawling of a news-hawker. If it is wantonly aspersed, it is but for a season, and that a short one, when it emerges, like the

moon from a passing cloud, to its original brightness. It it right, however, that the law, and that you, should hold the strictest hand over this kind of public animadversion, that forces humility and innocence from their retreat into the glare of public view; that wounds and terrifies, that destroys the cordiality and the peace of domestic life, and that, without eradicating a single vice, or single folly, plants a thousand thorns in the human heart.

John P. Curran, Trial of Peter Finnerty, Dec. 22, 1797.

It is true that up to that time he was a man of good character, but, gentlemen of the jury, while good character may be taken into consideration when determining whether a man has been guilty of murder or not, it will not save the defendant in this case. Many a man of good character has committed crime before this. Professor Webster, who killed Professor Parkman, a historic case, was a man of irreproachable character up to the time of the murder, yet he was hanged for it. Pettit, the wife murderer, a minister of the gospel, who was sent to the penitentiary for life for murdering his wife, up to the time of that direful murder had been a man of good character and had proved it.

Henry N. Spaan, for prosecution in People v. William E. Hinshaw, for the murder of his wife, Danville, Ind., Oct. 1, 1895.

Good character rests on what you have done, not what you say you are going to do. Good character rests upon a fulfilment, not a promise. It rests on a specie basis. Into that grand edifice that you call character goes every good and splendid deed of your life.

Robert G. Ingersoll, Speech in Indianapolis, Sept. 21, 1876.

But man is known to be a selfish as well as a social being. Respect for character though often a salutary restraint, is but too often overruled by other motives. . . . When numbers of men act in a body, respect for character is often lost, just in proportion as it is necessary to control what is not right.

James Madison, Speech in the Virginia State Convention, Dec. 2, 1829.

Then, at the very threshold of this case, you are to answer this question: Can a young and generous mind, wholly uncontaminated with vice, unsullied and unstained by contact with the evil practices of life, without previous training even in the contemplation of crime, at once, while in a healthy state, in the undisturbed enjoyment of all its faculties, incur that awful grade of guilt at which civilized human nature in all ages stands aghast? Is it within your experience that the soil of virtue bears spontaneously the hideous fruits of vice? Are there no gradations in human character and conduct? Where is the hardened criminal who ever ascended the gibbet in expiation of his offenses who has not marked his downfall from small beginnings, increasing gradually and swelling in volume until he was hurled onward to the commission of gigantic crimes for which the law claimed his life as forfeit? And yet you are called on to believe that this defendant, at one single bound, sprang from the paths of virtue, gentleness and purity, without any intervening preparation, to the highest and most revolting grade of guilt and ferocity known to human society.

Daniel W. Voorhees, Trial of Mary Harris for the murder of A. J. Burroughs, Washington, D. C., July, 1865.

CHARACTERS COMPARED.

Let us put the case between Burr and Blennerhassett. Let us compare the two men and settle this question of precedence between them. It may save a good deal of troublesome ceremony hereafter.

Who Aaron Burr is, we have seen in part already. I will add, that, beginning his operations in New York, he associates with him men whose wealth is to supply the necessary funds. Possessed of the mainspring, his personal labor contrives all the machinery. Pervading the continent from New York to New Orleans, he draws into his plan, by every allurement which he can contrive, men of all ranks and descriptions. To youthful ardor he presents danger and glory; to ambition, ranks, and titles, and honors; to avarice, the mines of Mexico. To each person whom he addresses he presents the object adapted to his taste. His recruiting officers are appointed. Men are engaged throughout the continent. Civil life is indeed quiet upon its surface, but in its bosom this man has contrived to deposit the materials, which, with the slightest touch of his match, produce an explosion to shake the continent. All this, his restless ambition has contrived; and in the autumn of 1806 he goes forth for the last time to apply his match. On this occasion he meets with Blennerhassett.

Who is Blennerhassett? A native of Ireland, a man of letters who fled from the storms of his own country to find quiet in ours. His history shows that war is not the natural element of his mind. If it had been, he never would have exchanged Ireland for America. So far is an army from furnishing the society natural and proper to Mr. Blennerhassett's character, that on his arrival in America, he retired even from the population of the Atlantic States, and sought quiet and solitude in the bosom

of our western forests. But he carried with him taste and science, and wealth; and lo, the desert smiled. Possessing himself of a beautiful island in the Ohio, he rears upon it a palace, and decorates it with every romantic embellishment of fancy. . . .

Yet this unfortunate man thus deluded from his interest and his happiness, thus seduced from the paths of innocence and peace, thus confounded in the toils that were deliberately spread for him, and overwhelmed by the mastering spirit and genius of another—this man, thus ruined and undone, and made to play a subordinate part in this grand drama of guilt and treason—this man is to be called the principal offender, while *he,* by whom he was thus plunged in misery, is comparatively innocent, a mere accessory. Is this reason? Is it law? Is it humanity? Sir, neither the human heart nor the human understanding will bear a perversion so monstrous and absurd! so shocking to the soul! so revolting to reason! Let Aaron Burr then not shrink from the high destination which he has courted, and having already ruined Blennerhassett in fortune, character and happiness forever, let him not attempt to finish the tragedy by thrusting that ill-fated arm between him and punishment.

William Wirt, Trial of Aaron Burr for treason, etc., at Richmond, Va., August, 1807.

CHARITY.

Charity is the paramount virtue; all else is a sounding brass and a tinkling cymbal. Charity suffereth long and is kind. Forbid it not to come into your deliberations; and, when your last hour comes, the memory that you allowed it to plead for your erring brother, John E. Cook, will brighten your passage over the dark river and rise by your side as an interceding angel in that day when your

trial, as well as his, shall be determined by a just and merciful God.

Daniel W. Voorhees, in behalf of John E. Cook, Charlestown, Va., Nov. 8, 1859.

CHILDREN AS JUDGES OF AFFECTION.

With children everywhere he has been a favorite; and since little children crept upon the knee of the Saviour eighteen hundred years ago, they have been the most infallible judges of a gentle and affectionate heart. Amiability and sweetness of temper he has carried with him through the world; and he brings that trait now before you to show that strong inducements and powerful incentives must have been brought to bear in order to engage him in an enterprise so desperate as that for which his life is now so sadly imperiled. What motive controlled him to this action? A crime without a motive cannot exist.

Daniel W. Voorhees, in behalf of John E. Cook, Charlestown, Va., Nov. 8, 1859.

CIRCUMSTANCES.

This case, in order to embrace all its horrible relations, ought to be decided in a long boat, hundreds of leagues from shore, loaded to the very gunwale with forty-two half naked victims; with provisions only sufficient to prolong the agonies of famine and of thirst; with all the elements combined against her; leaking from below, filling also from above; surrounded by ice, unmanageable from her condition, and subject to destruction from the least change of the wind and the waves—the most variable and most terrible of all the elements. Decided at such a tribunal, nature—intuition—would at once pronounce a verdict, not only of acquittal, but of commendation. The prisoner might, it is true, obtain no outward

atonement for nine months of suffering and of obloquy; but he would at least enjoy the satisfaction always to be derived from a consciousness of rectitude, in which the better part of the world sympathizes, and in which it confides.

David Paul Brown, in defense of Alexander William Holmes (indicted for manslaughter on the high seas), Philadelphia, April, 1842.

CIRCUMSTANTIAL EVIDENCE.

Circumstantial evidence is not to be tested by the strongest circumstance in it, but the courts have held over and over again that it must be tested by the weakest link in the chain.

Edgar N. Wilson for defense, in People v. Marks, Syracuse, N. Y., July 16, 1895.

Where a witness swears glibly to a number of circumstances, where it is impossible to produce contradictory proof, and is found to fail in one, it shall overthrow all the others.

John P. Curran, Trial of Rev. Wm. Jackson, Dublin, April 23, 1795.

The burden of proof is on the People, and their evidence is circumstantial, say our friends. True. But not one day of your lives do you live without relying on circumstantial evidence. You cannot walk a block without meeting circumstantial evidence in common affairs. You got up yesterday morning, and saw snow. It was snow as surely as if you had seen it fall. You know it fell. It is here as a fact. You may see on it the track of a cat. You know that a cat has crossed in that direction. A

man drives up with a horse covered with foam. You say he has been driven rapidly. You see he is shod. It is the work of a man. You did not see the shoe nailed on. This evidence is all circumstantial. An able author has written a book citing eleven hundred strange cases of conviction on circumstantial evidence, and one—only one —wrongfully convicted.

G. V. N. Lothrop, Trial of George Vanderpool for the murder of his partner, Herbert Field, Manistee, Mich., Jan'y, 1870.

CLIENT AND ADVOCATE.

As well might you, if called on to give compensation to a man for the murder of his dearest friend, to find the measure of his injury by weighing the ashes of the dead. But it is not, gentlemen of the jury, by weighing the ashes of the dead that you would estimate the loss of the survivor.

John P. Curran, in case of Massy v. Headfort, Ennis Summer Assizes, Ire., July 27, 1804.

COINCIDENCES.

Were all these arrangements coincidences, or were they purposeful? Were they not part of one structure, stones of one building, the outlines of which spelled "murder?"

Mr. Osler, Prosecutor in People v. Hymans, Toronto, Canada, Nov. 28, 1895.

CONFESSIONS.

The evidence of confession may sometimes be the highest and most satisfactory in a judicial investigation; and, on the other hand, it may be, according to the circumstances of the case, the most worthless by which human rights are ever brought in peril in a court of law. . . . Is there not extreme danger that the extent and nature

of the confession, which is insisted upon, will be exaggerated and colored when it comes to be reported to you by parties with a disposition and temper to report unfavorably. Helen Dalton did not stand in a position in which she could deny all impropriety and all guilt; on the contrary her case is—and it has this affecting and this important peculiarity—that she had much wrong to confess, that she had much guilt to own, that she had many temptations to acknowledge, that she had much sin to pray God and her husband to forgive; therefore, when she is making confessions to this extent, is there not danger the most extreme, unless we can place the most undoubted reliance on the kind of testimony and the character of witnesses by whom it comes to be reported to us, that it will come exaggerated, and misconceived and overrated, perilously and fatally, at the cost of truth?

Rufus Choate, in Dalton divorce case.

DOUBTS ARISING FROM CONFESSIONS.

Gentlemen, if we can feel undoubted confidence that the exact words of the speaker are brought before us as they were uttered; if we can feel undoubted confidence that we have them all in their proper order and according to their sense and meaning as they were spoken; if we can feel undoubted confidence that nothing has been omitted, nothing has been colored, the right collocation has been pursued from first to last, and that the true substantial sense and effect, as it was intended when they were uttered, has been given, we may then, with great confidence and certainty, proceed to the most solemn of adjurations. But if, on the other hand, there is reason to fear that the words themselves may have been imperfectly heard; if they come reported to us by untrustworthy and unreliable witnesses; if they are testified to by per-

sons under strong temptation to color, to exaggerate, to forget, to drop the appropriate qualifications, to change the order of them as they are spoken; if they come before us under such circumstances as these, gentlemen, there is no weaker or more worthless or more pernicious description of proof on which an intelligent jury are called upon to investigate a case.

Rufus Choate in Dalton divorce case.

CONFIDENCE.

Confidence is a plant of slow growth in an aged bosom, youth is the season of credulity; by comparing events with each other, reasoning from effects to causes, methinks I plainly discover the traces of an overruling influence.

William Pitt, Speech in the House of Commons on the right of taxing America—1766.

CONSCIENCE.

Lady Macbeth must needs walk by night in her sleep and rub her hands as if to wash them, and cry out, "Out, damned spot, out I say!" But all Neptune's ocean will not wash the stain away; all the perfumes of Arabia will not sweeten the murderer's hand. Conscience, the greatest gift of God, the child itself of God, working and acting obedient to the same law by which your system and mine, by their nature will attempt to throw off disease, that which is imperfect and that which is poison, I say by that same law conscience seeks to throw off its load of guilt.

State's Attorney Frank M. Nye, in People v. Hayward, Minneapolis, Minn., Dec., 1895.

We all know that conscience is not a sufficient safeguard; and besides, that conscience itself may be deluded,

may be misled by an unconscious bias, into acts which an enlightened conscience would forbid.

James Madison, Speech in Virginia State Convention, Dec. 2, 1829.

THE CONVENIENCE OF CONSCIENCE.

It was the most convenient thing indeed for a man to have a conscience, behind which he could shelter himself from whatever he did not like to face.

Charles James Fox, Speech in the House of Commons, Dec. 18, 1782.

CONSENT IN LAW.

Volenti non fit injuria.

That to which a person assents is not estimated in law an injury.

CONSENT UNDER PROTEST.

Sir, the consent of Maine to part with her soil and her sovereignty was given with a bleeding heart; it was like the consent of him who bares his own right arm to the surgeon's knife when advised that his life can only be preserved by its amputation; she consented as one consents to commit to kindred dust the children of his body; she consented as the red man consents to be driven from his happy hunting grounds, the graves of his fathers and the banks of the streams where he sported in childhood; she consented, as was said by another, as "the victim consents to execution because he walks and is not dragged to the scaffold which has been erected to receive him."

Daniel S. Dickinson, Speech in reply to Webster on the Northeastern Boundary question, U. S. Senate, April 9, 1846.

CONSPIRACY.

And I may thus exemplify this case: Several persons set out together, or in small parties, upon one common design, be it murder, or other felony; or for any other purpose, unlawful in itself; and each taketh the part assigned him: one to commit the fact, others to watch at proper stations, to prevent a surprise, or favor, if need be, the escape of those who are more immediately engaged; they are all (provided the fact be committed,) in the eye of the law, present at it. For it was made a common cause with them; each man operated in his station, at one and the same instant, towards the same common end; and the part each man took, tended to give countenance, encouragement, and protection, to the whole gang, and to ensure the success of their common enterprise.

John P. Curran, Trial of Sir Henry Hayes, Cork, April 16, 1801.

THE CONSPIRACY TO MURDER.

A conspiracy to kill and murder does not owe its criminality to the length of time it may occupy in its progress, from its first conception to its ultimate adoption —a conspiracy may be formed the very instant before the step is taken to put it into effect. If a number of people meet accidentally in the street, and conspire together to kill and murder at the moment, it is as essentially the crime of conspiracy as if it had been intended for a year before, and hatched for that year to the moment of its accomplishment.

John P. Curran, Trial of John Costly for conspiracy to murder, Dublin, Feb. 23, 1804.

THE CONSTITUTION.

What does it contain? This among other things:

" The trial of all crimes, except in cases of impeachment, shall be by jury."

Judge Jeremiah S. Black, in Supreme Court, Washington, Dec., 1866.

CONSTITUTION OF THE UNITED STATES.

Commerce, credit, and confidence were the principal things which did not exist under the old Confederation, and which it was a main object of the present Constitution to create and establish. A vicious system of legislation, a system of paper money and tender laws, had completely paralyzed industry, threatened to beggar every man of property, and, ultimately, to ruin the country. The relation between debtor and creditor, always delicate, and always dangerous whenever it divides society, and draws out the respective parties into different ranks and classes, was in such a condition in the years 1787, 1788, and 1789, as to threaten the overthrow of all government; and a revolution was menaced, much more critical and alarming than that through which the country had recently passed. The object of the new Constitution was to arrest these evils; to awaken industry by giving security to property; to establish confidence, credit, and commerce, by salutary laws, to be enforced by the power of the whole community. The Revolutionary War was over; the country had peace, but little domestic tranquillity; it had liberty, but few of its enjoyments, and none of its security. The States had struggled together, but their union was imperfect. They had freedom, but not an established course of justice. The Constitution was, therefore, framed, as it professes, " to form a more perfect union, to establish justice, to secure the blessings of liberty, and to insure domestic tranquillity."

Daniel Webster, in Ogden v. Saunders, Washington, Jan'y, 1827.

LOSS OF VENERATION FOR THE CONSTITUTION.

It has become fashionable to decry its merits. We have lost our veneration for the political parent which has nursed and protected our infancy and glorified our manhood. We have grown too large and strong for constitutional restraint. It needs but the doctrine of the learned judge advocate to disencumber our maddened passions and ambitions of all embarrassment, and leave us to that career of political profligacy which prophesied and accomplished the fate of the old republics.

Wm. A. Beach, in case of North and others.

THE BRITISH CONSTITUTION.

The peculiarity of the British constitution (to which, in its fullest extent, we have an undoubted right, however distant we may be from the actual enjoyment), and in which it surpasses every known government in Europe, is this, that its only professed object is the general good, and its only foundation the general will.

John P. Curran, Trial of A. H. Rowan, Jan. 29, 1794.

THE OBLIGATION OF A CONTRACT.

The obligation of a contract belongs not to the civil or political code, but the moral. It is imposed by an authority higher than human; and can be discharged by no power under heaven without the assent of him to whom the obligation is due. It is binding on conscience itself. If a discharged debtor has in his pocket the discharges of every government on earth, he would not be an honest man should he refuse to pay his debts, if ever in his power. In this sense this Government is just as powerless to discharge a debt as the most inconsiderable state in the Union. But the subject may be reviewed in a different light. It may mean that Government is not bound to give its aid to a hard and gripping creditor, in the cruel attempt to coerce the honest but unfortunate

debtor who has lost his all, to pay his debts when it is utterly beyond his power. Certainly not; in that sense every government has a right to discharge the debt as well as the person. They both stand on the same ground.

John C. Calhoun, Speech in the United States Senate, June 2, 1840, on the Bankrupt Bill.

We contend that the obligation of a contract, that is, the duty of performing it, is not created by the law of the particular place where it is made, and dependent on that law for its existence; but that it may subsist, and does subsist, without that law, and independent of it. The obligation is in the contract itself, in the assent of the parties, and in the sanction of universal law. This is the doctrine of Grotius, Vattel, Burlamaqui, Pothier, and Rutherforth. The contract, doubtless, is necessarily to be enforced by the municipal law of the place where performance is demanded. The municipal law acts on the contract after it is made, to compel its execution, or give damages for its violation. But this is a very different thing from the same law being the original or fountain of the contract.

Let us illustrate this matter by an example. Two persons contract together in New York for the delivery, by one to the other, of a domestic animal, a utensil of husbandry, or a weapon of war. This is a lawful contract, and, while the parties remain in New York, it is to be enforced by the laws of that State. But, if they remove with the article to Pennsylvania or Maryland, there a new law comes to act upon the contract, and to apply other remedies if it be broken. Thus far the remedies are furnished by the laws of society. But suppose the same parties to go together to a savage wilderness, or a

desert island, beyond the reach of the laws of any society. The obligation of the contract still subsists, and is as perfect as ever, and is now to be enforced by another law, that is, the law of nature; and the party to whom the promise was made has a right to take by force the animal, the utensil, or the weapon that was promised him. The right is as perfect here as it was in Pennsylvania, or even in New York.

Daniel Webster, in Ogden v. Saunders.

CONTRACTS.

The definition given by the court in Sturges v. Crowninshield is sufficient for our present purpose. "A contract," say the court, "is an agreement to do some particular thing; the law binds the party to perform this agreement, and this is the obligation of the contract."

Daniel Webster, in Ogden v. Saunders.

It may be laid down as an established rule that, where the stronger party refuses to be explicit, as in this case, the weaker if it yields its assent, will in the end be deceived and defrauded.

John C. Calhoun, Speech in the United States Senate, Aug. 12, 1849, on the bill establishing territorial government for Oregon and extending the Missouri compromise line to the Pacific.

CONTRACTS AND MUNICIPAL LAW.

The municipal law is the force of society employed to compel the performance of contracts. In every judgment in a suit on contract, the damages are given, and the imprisonment of the person or sale of goods awarded, not in performance of the contract, or as part of the contract, but as an indemnity for the breach of the contract.

Daniel Webster, in Ogden v. Saunders.

CONTRACTS AND SOCIETY.

It must be a lawful contract, doubtless, that is, permitted and allowed; because society has a right to prohibit all such contracts, as well as all such actions as it deems to be mischievous or injurious. But if the contract be such as the law of society tolerates—in other words, if it be lawful, then, we say, the duty of performing it springs from universal law. And this is the concurrent sense of all the writers of authority.

Daniel Webster, in Ogden v. Saunders.

CONTRACTS AND THE LAW.

Modus et conventio vincunt legem.

The form of agreement and the convention of parties overrule the law.

THE DISSOLUTION OF CONTRACTS.

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est.

Nothing is so consonant to natural equity as that every contract should be dissolved by the same means which rendered it binding.

CONVINCING.

You can convince a man without killing him, but you can't kill him without convincing him.

Robert G. Ingersoll, Speech at Lewiston, Me, 1880.

SINCERE CONVICTIONS.

And shall it ever be said that sincere convictions on these theories of secession and of revolution are entitled to more respect than sincere convictions and opinions on the subject of human rights? Shall it be said that faith in Jefferson Davis is a greater protection from the penalty of the law than faith in God was to John Brown or Francis Ravaillac?

William M. Evarts, in case of Savannah Privateers.

CORPORATIONS.

We have seen an East India Company created, which has carried dismay, desolation and death through one of the largest portions of the habitable world. A company which is in itself a sovereignty—which has subverted empires, and set up new dynasties, and has not only made war, but war against its legitimate sovereign! Under the influence of this power we have seen arise a South Sea company and a Mississippi company, that distracted and convulsed all Europe, and menaced a total overthrow of all credit and confidence, and universal bankruptcy.

Henry Clay, Speech in the United States Senate, 1811, *on a National Bank.*

But my brother forgets those great words, standing out in history ever since the days of England's brilliant jurist, Lord Coke: "Corporations have no souls; no eyes to look on justice; no ears to hear the voice of witnesses; no hearts to feel for suffering humanity!" An honest citizen may be a director in a bad corporation, where the majority rules, and he loses his identity and becomes a soulless citizen. He has the double character—one a man, a tender, loving man, and one a hard-hearted corporator.

G. V. N. Lothrop, in May Stephans insurance case, Detroit, Mich., March, 1875.

Among other things it is said that a corporation has no soul. Sir, there is black letter authority enough for that. But the gentlemen should have done justice to the ancient luminaries of the law and told further that they only intended to say that a corporation as such, could not commit

a crime, and in its corporate capacity could not be punished as a criminal.

Thomas Corwin, Speech in the House of Representatives, April 4, 1834, *on the public deposits.*

COUNSEL CHARACTERIZED.

Appeals have been made to your sympathies; and that is all, as I will show. Sympathy! sympathy! sympathy! and nothing else, and with unusual zeal and eloquence. Good Heaven! Behold what an array of counsel. In Joseph H. Bradley you behold the Ajax of the defense. In my friend William Y. Fendall you behold the young, the ardent, the amorous Tydides, not casting his javelin at the Goddess of Love as she flies through the air on her way to heaven, but, with his armor off, kneeling at her feet. In Judge Mason you behold the sweetly speaking Nestor of the Grecian camp. In Judge Hughes the wise, the prudent, the cautious Ulysses. In the Hon. Daniel W. Voorhees you behold the fierce, implacable, irresistible Achilles, and even old Agamemnon (pointing to the judge on the bench) himself, can never look at the gentle sufferer without a sigh expressive of his sympathy; and there sits the lovely Helen, bathed in tears, surrounded by her female attendants, urging on these sturdy warriors to deeds of superhuman valor. Here I stand, aided only by my efficient and accomplished assistant.

U. S. District Attorney Edward C. Carrington, Trial of Mary Harris, Washington, D. C., July, 1865.

COURAGE AND CONSCIENCE.

I have no doubt he acted with courage in battle. Many have done so, surrounded by admiring comrades, inspired by hopes of distinction, who have faltered in the face of a personal conflict—especially so when not upheld by the consciousness of right. He who hath his quarrel just has

a contempt for danger which the heart oppressed with guilt never knows. A troubled conscience makes many strange and devious steps. Many actions that are mysterious to the world would be thus explained if the secrets of all hearts could be laid bare.

Daniel W. Voorhees, in defense of Harry C. Black, Frederick City, Md., April 21, 1871.

ACTS OF THE COURT.

Actus curiæ neminem gravabit.

An act of the court shall prejudice no man.

THE DUTIES OF COURT AND JUDGES.

An inquiry is wished as to the most effectual way of putting an end to the clamors and libels, which are the disorder and disgrace of the times. For people remain quiet—they sleep secure, when they imagine that the vigilant eye of a censorial magistrate watches over all the proceedings of judicature; and that the sacred fire of an eternal constitutional jealousy which is the guardian of liberty, law and justice, is alive night and day, and burning in this house. But when the magistrate gives up his office and his duty, the people assume it, and they inquire too much, and too irreverently, because they think their representatives do not inquire at all.

Edmund Burke, Speech in the House of Commons, March, 1771.

THE COURT OF CLAIMS.

Prior to the institution of this court, all rights, as against the nation, were imperfect in the legal sense of the term; every duty of the nation was a duty of imperfect obligation. There was no judicial power capable of declaring either; no private person possessed the means of enforcing the one or coercing the other. These rights may be deemed still to remain, in one sense, imperfect;

for the decrees of this court cannot be carried into execution by authority of the court itself. But effectual progress has been made toward giving form and method to the administration of justice between the nation and the individual. This court enables the latter to obtain an authoritative recognition of his right. No more is needed; for in no case can a State, after such a recognition, withhold payment and yet retain its place in the great family of civilized nations.

Charles O'Conor, for the claimants, in the case of the Brig-of-war General Armstrong, Washington, D. C., Nov. 27, 1855.

THE LAW OF THE COURT.

Cursus curiæ est lex curiae.

The practice of the court is the law of the court.

CRIME.

All crime is irrational, unnatural, because the true office of reason directs men to pursue their own welfare. All crime is opposed to reason.

John Van Arman, in Conspiracy case, Detroit, Mich., Sept., 1851.

This crime under consideration is one of singular difficulty to detect, because it is committed in the dark. In cases of this kind the protection of society requires a most careful investigation. The elements of the crime of arson in the first degree require that the burning must have been malicious and wilful; it must have been committed in the night time; there must have been a human being in the school house, and it must have been within the knowledge of the defendant that there was a human being in the building at the time of the burning.

District Attorney George D. Forsythe, in People v. Cronin, at Rochester, N. Y., Dec. 20, 1895.

Our fathers well knew that the man who is accused of crime fights with society banded against him. It is a matter of common observation that that is so. Friends fall off, resources fail, the public prints may be full of exaggerated statements against him, there exists that universal feeling of distrust which leads us all to avoid a man who is accused. Hence sprang up that merciful maxim that a person accused of any offense, be it high or low, is conclusively presumed to be innocent until he is proved guilty by such a weight of evidence as shuts the avenue of every presumption in his favor. He must be proved guilty beyond a reasonable doubt, beyond the last reasonable doubt which can arise in the mind of any rational person considering the case. Doubt, not only as to the act, doubt, not only as to the intent, but doubt as to the motive, doubt as to each element of the act.

Ex-Governor Davis, in Page Impeachment case, St. Paul, Minn., 1878.

DUTY OF SOCIETY TOWARD CRIME.

The great, the main duty; the great, the main right of civil society, in the exercise of its dominion over the liberties, lives, and property of its subjects, is the good of the public, in the prevention, the check, the discouragement, the suppression of crime.

William M. Evarts, in case of Savannah Privateers.

THE ELEMENTS OF CRIME.

Every crime is like every other complex idea, capable of a legal definition. If all the component parts which go to its formation are put as facts upon the record, the court can pronounce the perpetrator of them a criminal: but if any of them are wanting, it is a chasm in fact, and cannot be supplied. Wherever intention goes to the essence of the charges it must be found by the jury. It must be

either comprehended under the word guilty in the general verdict, or specifically found as fact by the special verdict.

Lord Erskine, Argument in the Court of King's Bench, Eng., in support of the rights of juries.

THE EVIDENCE AND THE CRIME.

The more horrid and atrocious the nature of any crime charged upon any man is, the more clear and invincible should be the evidence upon which he is convicted.

John P. Curran, Trial of the Dublin Defenders, Dec. 22, 1795.

THE INCREASE OF CRIME.

As civilization increases crime becomes more wicked. We are becoming used to the armed robber.

Attorney General H. M. Knowlton, in People v. Sullivan, Lowell, Mass., June 14, 1895.

CRIMINAL CASES AND CHARGES.

There is more or less pain in every criminal case. There are few men brought into court who do not have wives and mothers. In many instances a wife or mother comes into court to show her affection in the hour of extremity. But it is your place, gentlemen of the jury, to go right on, looking only to your duty.

John W. Kern, for prosecution in People v. Haughey, Indianapolis, Ind.

Remember, gentlemen, that the burden rests upon the people; remember that the law in its humanity declares, if there is a reasonable doubt in the minds of the jury, not merely upon the whole case, but upon any one branch of it, you are bound by that oath you have registered in heaven, to pronounce a verdict of not guilty.

Lyman Tremain, in defense of Edward S. Stokes, New York, Oct. 27, 1873.

THEORY OF DAMAGES IN CRIMINAL CONVERSATION.

The learned counsel has told you that this unfortunate woman is not to be estimated at forty thousand pounds. Fatal and unquestionable is the truth of this assertion. Alas! gentlemen, she is no longer worth anything; faded, fallen, degraded and disgraced, she is worth less than nothing. But it is for the honor, the hope, the expectation, the tenderness and the comforts that have been blasted by the defendant, and have fled forever, that you are to remunerate the plaintiff by the punishment of the defendant. It is not her present value which you are to weigh; but it is her value at that time when she sat basking in a husband's love, with the blessing of heaven on her head, and its purity in her heart; when she sat among her family and administered the morality of the parental board; estimate that past value, compare it with its present deplorable diminution, and it may lead you to form some judgment of the severity of the injury and the extent of the compensation.

John P. Curran, in Massy v. Marquis of Headfort, County Clare, Ire., July 27, 1804.

CRIMINAL INTENT—THE ESSENCE OF CRIME.

It may be affirmed as an universal proposition, that criminal intention is the essence of every species of crime. All indictments commence with an assertion of corrupt motives; and in indictments for treason, the overt acts laid are to show the manner in which the wicked intention is carried into execution. In the speeches of Lord Erskine, to whom the world is so largely indebted for a correct knowledge of the principles of civil liberty and the law of treason, you will find him perpetually contending, and contending with effect, that although the crown had proved the facts charged, it had not shown the evil design,

the corrupt purpose, without which the facts are nothing. . . . This is the master key which lets you into the whole secret of this title of the criminal law. Sir Walter Tyrrel, who, in shooting at a deer killed the king, could not be convicted of treason. The killing was *per infortunium*. So, where a person *non compos* slays another designedly, still he is innocent, because there is no malignity in his heart. So in every homicide, it is felonious, justifiable or excusable, according to the purpose with which the act was perpetrated. It is murder where it is done through malice; manslaughter, if without malice; where it is done through misfortune, or in self defense, it is excusable, and it is justifiable when done in advancement of public justice, in obedience to the laws. If the heart be uncontaminated by corrupt intentions, the man is innocent, for it is motive that qualifies actions. As it will be with God so it is with the man: the latent intention of the heart must be searched.

William Pinkney, in defense of John Hodges, Baltimore, Md., May, 1815.

CONFUSED MINDS OF CRIMINALS.

I claim there is no criminal on the face of the earth, even though he makes no direct confession, but what will under the laws of his being and the laws of God, show confusion, directly or indirectly betray the condition of his mind and disclose to some extent to him who can read it, the guilt which lies in his heart.

State's Attorney Frank M. Nye, in People v. Hayward, at Minneapolis, Minn., Dec., 1895.

THE ADMINISTRATION OF JUSTICE TO CRIMINALS.

Then comes the trial, and it must be before a regular court of competent jurisdiction, ordained and established for the State and district in which the crime was com-

mitted; and this shall not be evaded by a legislative change in the district after the crime is alleged to be done.

His guilt or innocence shall be determined by an impartial jury. These English words are to be understood in their English sense, and they mean that the jurors shall be fairly selected by a sworn officer, from among the peers of the party residing within the local jurisdiction of the court. When they are called into the box, he can purge the panel of all dishonesty, prejudice, personal enmity, and ignorance, by a certain number of peremptory challenges, and as many more challenges as he can sustain by showing reasonable cause.

The trial shall be public and open, that no underhand advantage may be taken. The party shall be confronted with the witnesses against him, have compulsory process for his own witnesses, and be entitled to the assistance of counsel in his defense. After the evidence is heard and discussed, unless the jury shall, upon their oaths, *unanimously* agree to surrender him up into the hands of the court as a guilty man, not a hair of his head can be touched by way of punishment.

After a verdict of guilty, he is still protected. No cruel or unusual punishment shall be inflicted, nor any punishment at all, except what is annexed by law to his offense. It cannot be doubted for a moment, that if a person convicted of an offense not capital were to be hung on the order of a judge, such judge would be guilty of murder as plainly as if he should come down from the bench, tuck up the sleeves of his gown, and let out the prisoner's blood with his own hand.

After all is over, the law continues to spread its guardianship around him. Whether he is acquitted or condemned he shall never again be molested for that offense.

No man shall be twice put in jeopardy of life or limb for the same cause.

Judge Jeremiah S. Black, in Milligan Case, Washington, D. C., Dec., 1866.

A man shall not be charged with one crime, and convicted of another.

John P. Curran, Trial of Henry Sheares, for high treason, Dublin, July 14, 1798.

The true rule by which to ascertain what evidence should be deemed sufficient against a prisoner is, that no man should be convicted of any crime except upon the evidence of a man subject to an indictment for perjury, where the evidence is such as if false, the falsehood of it may be so proved as to convict the witness of perjury.

John P. Curran, Trial of Dublin Defenders, Dec. 22, 1795.

Thus the law, which is made to correct and punish the wickedness of the heart and not the unconscious deeds of the body, goes up to the fountain of human agency, and arraigns the lurking mischief of the soul, dragging it to light by the evidence of open acts. The hostile mind is the crime.

Lord Erskine, Speech against constructive treason, in defense of Lord George Gordon.

In proportion as you increase the severity of the punishment, so you diminish the certainty of its infliction;

courts will be more scrupulous and technical in motions to arrest judgment and to quash indictments; juries will not convict for an offense so readily, where the punishment is cruel as where it is more lenient.

Thomas Corwin, Speech in the General Assembly of Ohio, Dec. 18, 1822, *against corporal punishment.*

Your lordships will observe, that in the whole catalogue of crimes for which a justice of peace may grant a warrant, there is not one that imposes upon him the necessity of deciding upon any matter of law, involving the smallest doubt or difficulty whatsoever. In treason the overt act; in felony, whether capital or not, the act; in misdemeanors, the simple act.

John P. Curran, Trial of Judge Johnson, London, Feb'y 4, 1805.

THE POPULARITY OF CUSTOMS.

Customs may not be as wise as laws, but they are always more popular. They array upon their side alike the convictions and prejudices of men. They are spontaneous. They grow out of man's necessities and invention, and as circumstances change and alter and die off, the custom falls into desuetude and we get rid of it. But if you make it into law circumstances alter, but the law remains and becomes part of that obsolete legislation which haunts our statute books and harasses society.

Lord Beaconsfield, Speech in the House of Commons, March 11, 1870, *on the Irish Land Bill.*

DEBTS.

In considering this subject, it will be necessary to define what a debt is. I mean by it an engagement or promise

by one man to pay another for a valuable consideration an adequate price. By a contract thus made for a valuable consideration, there arises what, in the law phrase, is called a *lien* on the body and goods of the promisor or debtor.

Patrick Henry, in case of Jones v. Walker, Richmond, Va., Nov., 1791.

A JUST DEFENSE.

But, in the cause of humanity, we are encouraged to hope for divine assistance where human powers are weak. As you all know, I provided for my way through these trials, neither gold nor silver in my purse, nor scrip; and when I could not think beforehand what I would say, I remembered that it was said to those who had a beneficent commission, that they should take no thought what they should say when brought before the magistrate, for, in that same hour, it should be given them what they should say, and it should not be they who should speak, but the spirit of their Father speaking in them.

William H. Seward, in case of the People v. the negro, William Freeman, indicted for the murder of John G. Van Nest, Auburn, N. Y., July, 1846.

DESPOTISM.

Under the old French monarchy the favorite fashion of it was a *lettre de cachet,* signed by the king, and this would consign the party to a loathsome dungeon until he died, forgotten by all the world. An imperial *ukase* will answer the same purpose in Russia. The most faithful subject of that amiable autocracy may lie down in the evening to dream of his future prosperity, and before daybreak he will find himself between two dragoons on his way to the mines of Siberia. In Turkey, the verbal

order of the Sultan or any of his powerful favorites will cause a man to be tied up in a sack and cast into the Bosphorus. Nero accused Peter and Paul of spreading a "pestilent superstition," which they called the gospel. He heard their defense in person, and sent them to the cross. Afterwards he tried the whole Christian church in one body, on a charge of setting fire to the city, and he convicted them, though he knew not only that they were innocent, but that he himself had committed the crime. The judgment was followed by instant execution; he let loose the Prætorian guards upon men, women, and children to drown, butcher, and burn them. Herod saw fit, for good political reasons, closely affecting the permanence of his reign in Judea, to punish certain *possible* traitors in Bethlehem by anticipation. This required the death of all the children in that city under two years of age. He issued his "general order," and his provost marshal carried it out with so much alacrity and zeal that in one day the whole land was filled with mourning and lamentation.

Judge Jeremiah S. Black, on Right of Trial by Jury.

THE DESTRUCTION OF DESPOTISM.

The times were troublesome. All over Germany the spirit of rebellion was rising; everywhere the people wanted to see a first-class revolution, like that which had just exploded in France. Many persons in Bavaria disliked to be governed so absolutely by a lady of the character which Lola Montez bore, and some of them were rash enough to say so. Of course that was treason, and she went about to punish it in the simplest of all possible ways. She bought herself a pack of English bull-dogs, trained to tear the flesh and mangle the limbs, and lap the

life-blood; and with these dogs at her heels, she marched up and down the streets of Munich with a most majestic tread, and with a sense of power which any judge advocate in America might envy. When she saw any body whom she chose to denounce for "thwarting the government," or "using disloyal language," her obedient followers needed but a sign to make them spring at the throat of their victim. It gives me unspeakable pleasure to tell you the sequel. The people rose in their strength, smashed down the whole machinery of oppression, and drove out into uttermost shame king, strumpet, dogs and all. From that time to this neither man, woman, nor beast, has dared to worry or kill the people of Bavaria.

Judge Jeremiah S. Black, on Right of Trial by Jury.

FREE DISCUSSION.

One asylum of free discussion is still inviolate. There is still one spot in Europe where man can freely exercise his reason on the most important concerns of society; where he can boldly publish his judgment on the acts of the proudest and most powerful tyrants. The press of England is still free. It is guarded by the free Constitution of our forefathers. It is guarded by the hearts and arms of Englishmen, and, I trust I may venture to say, that if it be to fall, it will fall only under the ruins of the British empire.

It is an awful consideration, gentlemen. Every other monument of European liberty has perished. That ancient fabric which has been gradually reared by the wisdom and virtue of our fathers still stands. It stands, thanks be to God! solid and entire; but it stands alone, and it stands amid ruins.

Sir James Mackintosh, Trial of Jean Peltier, Court of King's Bench, Feb. 21, 1803.

DISCUSSION OF A QUESTION.

The first thing which presents itself in the discussion of any subject, is to state distinctly and with precision, what the question is, and where prejudice and misrepresentation have been exerted, to distinguish it accurately from what it is not.

Lord Erskine, Speech in defense of Thomas Paine, tried for libel.

DIVORCE.

There is a future for them both together, gentlemen, I think; but if that be not so—if it be that this matter has proceeded so far that her husband's affections have been alienated, and that a happy life in her case has become impracticable, yet for all that, let there be no divorce. For no levity, no vanity, no indiscretion, let there be a divorce. I bring to your minds the words of Him who spake as never man spake: "Whosoever putteth away his wife"—for vanity, for coquetry, for levity, for flirtation?—"Whosoever putteth away his wife for anything short of adultery, intentionally, willingly indulged, and that established by clear, undoubted and credible proof—whosoever does it, causeth her to commit adultery."

Rufus Choate, in Dalton divorce case.

REASONABLE DOUBT.

Now this term, reasonable doubt, is not a bugaboo invented by the courts, but as the court will tell you, it means just what it says—a reasonable doubt—not a chimerical, fanciful, evanescent impression that flits across your mind, but a fixed, tangible, reasonable doubt. As the courts have said, it is a term easily understood, but hard to define. It is not necessary before you find the

defendant guilty in this case that you must be convinced beyond the mere possibility of error.

Cash C. Hadley for prosecution, in People v. Hinshaw, Danville, Ind.

The moment the evidence amounts to what satisfies your judgment then there is no reasonable doubt. It is on such a doubt that the defense relies to block a conviction. If this defendant's guilt is not proved by the evidence, I do not want you to bring in a verdict against him. But I do not want the doubt to be a stumbling block to a fair consideration of the evidence. If your judgment is satisfied there can be no further proof.

District Attorney George D. Forsythe, in People v. Cronin at Rochester, N. Y., Dec. 20, 1895.

A reasonable doubt was an uncertainty as to guilt after careful consideration of the evidence. The principle of presumption of innocence had been, the Supreme Court said, traced back to Deuteronomy by Greenleaf, and permeated the Roman and Grecian law. Continuing, the Supreme Court quoted Greenleaf that it was the duty of all judges when requested to charge the presumption of innocence. The court held that presumption of innocence and reasonable doubt were not identical, but the presumption of innocence was the origin of the doctrine of reasonable doubt and essential to it.

Judge Luzenburg for defense, in People v. Bier, May 18, 1895.

DUTY AND RELIGION.

Summa ratio est quae pro religione facit.

That rule of conduct is to be deemed binding which religion dictates.

DUTY OF THE DISTRICT ATTORNEY.

True, the duty of the Government is to enforce the law; to punish offenders; to protect human life; but in no spirit of persecution and with no vindictiveness. It is a painful thing, and it ought to be so to the officer of public justice, to arraign, try, and execute even the guilty. Zeal, perhaps overmuch, and passion may be excused in the prisoner, or in her advocate when arraigned before the bar of public justice, and charged with the highest crime known to the laws, but the representative of the commonwealth comes here uninfluenced by private considerations. He is presumed to be disinterested, presumed to be impartial, and absolutely to desire, as the law desires, that no innocent person should suffer; and to desire to prosecute his cause in the spirit of the law, which says that it is better that ninety-nine guilty persons should escape than that one innocent person should suffer.

James Hughes, Trial of Mary Harris, Washington, D. C., July, 1865.

EQUITY.

The equity jurisdiction of Great Britain has been considered as an anomaly in legal science. Continental jurists seem never to have comprehended it; though it could easily be shown that no civil society ever existed in which there were not some remediable forms of injustice which *lex non exacte definit sed arbitrio boni viri permittit.* Institutions which are novel in form, will always excite criticism and opposition, however harmonious they may be, in principle, with what has gone before.

Charles O'Conor, for the claimants, in the case of the Brig-of-war General Armstrong.

ACQUIESCENCE IN ERROR.

Consensus tollit errorem

Acquiescence of the party who might take advantage of an error obviates its effect.

THE PURSUIT OF ERROR.

Among the last words of warning which came from the lips of Chatham, as he fell at his post in the British Senate, almost his dying words, were, "not to put trust in a man who perseveres in unretracted error."

Charles Sumner, Speech in Tremont Temple, Boston, Nov. 4, 1844, against the Mexican War.

THE EXISTENCE OF ERRORS AND TRUTH.

A mysterious providence has permitted, does always permit, error to exist everywhere, contemporaneously with truth, wrong with right, freedom with slavery; and between these different powers there is always an irrepressible conflict. That conflict is the trial of human virtue—a triumph of the good over the bad constitutes the perfection of human nature.

William H. Seward, Speech at Auburn, N. Y., Nov. 5, 1860.

EVIDENCE.

It is a rule of law not to make the evidence any stronger against the defendant than the witness makes it.

George Raines, in People v. Cronin, Rochester, N. Y.

EVIDENCE AND OATHS.

But of the *probability* of this evidence how shall I speak? What does it depend on? The integrity of the man who swears it. Do you think, gentlemen, that in every case an oath is a sufficient measure to weigh down life and liberty?—where a miscreant swears guilt against a man, must you convict him?

John P. Curran, Trial of Dr. Drennan, Dublin, June 25, 1799.

EVIDENCE BY ANTICIPATION.

But why did he take notes? He said it was because he foresaw what would happen. How fortunate the Crown is, gentlemen, to have such friends to collect evidence by anticipation.

Lord Erskine, Speech in defense of Lord George Gordon, against constructive treason.

SUPPRESSION OF EVIDENCE.

The presumptions are all against a proceeding like this. Evidence that is suppressed is presumed to be injurious to those who suppress it. This is an ancient maxim of the law as well as a proverb of wisdom.

Daniel W. Voorhees, Trial of Harry C. Black.

This is no forced assumption of mine. It is a well-settled conclusion of law. The suppression of evidence is a grave and almost conclusive presumption against the party that resorts to it. This is more especially true when, as in this case, the prosecution is sustained by the treasury of the Government in enforcing the attendance of witnesses. What is the object of a trial in a court of justice? We are here in search of truth. We have, each one of us, under the solemnities of an oath, invoked the name and help of God in the discharge of that duty. We stand on holy ground. Life, *life*, that mysterious gift of the Creator, is the issue at stake. Its awful import should inspire every breast with a religious desire to aid this court and jury in arriving, if possible, at the exact truth.

Daniel W. Voorhees, Trial of Mary Harris.

EXCLUSION.

Expressio unius est exclusio alterius.

The express mention of one thing implies the exclusion of another.

FAMILY HONOR.

And if he arose and acted upon this fact and slew the man who put out the light and joy of an innocent and unoffending household, would his conduct have been without precedent, novel and strange in the history of mankind? There is a very old case and of very high authority on this point. It is the earliest on record. The daughter of Jacob was seduced by a prince of one of the neighboring tribes. Her brothers, Simeon and Levi, were in the fields at their usual avocations, when they were told by others what had befallen their sister. They believed the story of their disgrace, and with their swords, in due time, they acted upon it to the total destruction, not merely of the seducer, but of the whole tribe who supported him in his conduct. And when their father, who was old and apprehensive of trouble growing out of their terrible vengeance, deplored their fierce and sanguinary measures, they gave that memorable answer which has sprung to the lips of manly brothers in every age and clime from that hour to this, "Shall he deal with our sister as a harlot?"

Daniel W. Voorhees, in defense of Harry C. Black.

FAMILY RELATIONS.

The very existence of civil society depends not on human life, but on the family relations. "Who knows not," says John Milton, "that chastity and purity of living cannot be established or continued, except it be first established in private families, from whence the whole

breed of men come forth?" "The family," says another distinguished moralist, "is the cradle of sensibility, where the first lessons are taught of that tenderness and humanity which cement mankind together; and were they extinguished, the whole fabric of society would be dissolved." In a general sense, the family may embrace various degrees of affinity, more or less near; but in a strictly legal sense it embraces the relations of husband and wife, parent and child, brother and sister. The first and most sacred tie, however, is the nuptial bond. "Eternal discord and violence," says a great moralist, "would ensue if man's chief object of affection were secured to him by no legal tie." No man could enjoy any happiness or pursue any vocation if he could not enjoy his wife free from the assaults of the adulterer. The dignity and permanence of the marriage are destroyed by adultery. When the wife becomes the adulterer's prey, the family is destroyed, and all family relations are involved in the ruin of the wife. When a man accepts a woman's hand in wedlock, he receives it with a vow that she will love, honor, serve and obey him in sickness or in health, and will cleave only to him. This bond is sanctified by the law of God. "What God hath joined together let no man put asunder." By a marriage, the woman is sanctified to the husband, and this bond must be preserved for the evil as well as for the good. It is the blessing of the marital institution that it weans men from their sins and draws them to the performance of their duties. This seal of the nuptial vow is no idle ceremony. Thenceforth the law commands the adulterer to beware of disturbing their peace. It commands that no man shall look on woman to lust after her.

Edwin M. Stanton, in Sickles' trial.

FICKLENESS.

But I mean to maintain, and I shall base the defense—a triumphant defense in this case, unless I deceive myself upon it—that her husband had her heart at first, and has it to-day; that this attachment (if you please to call it so) was merely a transient and superficial feeling, a false, fickle light on the surface of the stream, whose depths were unchanged, untroubled, undisturbed. How well she loved him we shall see, if you will permit me to go a little into the argument of the cause.

Rufus Choate, in Dalton divorce case.

FINANCIAL FAILURES.

Failures are not uncommon. They strew the sands of the ocean of commerce, but it is not every financial disaster that is criminal. Failure does not necessarily imply a crime on the part of those who were in control. You are not to infer that, because an enterprise was proved unsuccessful and goes down that the pilot who steered the vessel purposely ran it upon the rocks. Before you can conclude that those who have charge of an enterprise are criminals, you must conclude that there was an intent to send it to the bottom.

F. N. Chambers, for defense in People v. Haughey, Indianapolis, Ind.

FINANCIAL WRECKAGE.

For years the ancient mariner at the helm of the Indianapolis National Bank guided his craft through squalls and along rocky shores. He knew for years that he was sinking. He knew that he had landed at a small island and had taken aboard these two outcasts and that they were scuttling his ship in the hold. He felt himself sinking, but he dare not leave the helm. And these scuttlers stood by, clothed with life-preservers, ready to jump

when the final moment came and the billows were about to roll over the ship.

For we don't know how many years this old man recognized the gathering storm and knew that he must go to the bottom. The pistol of the suicide was at his head we know not how many times, but he was a Christian and would not add to the wreck of the institution.

U. S. District Attorney Frank B. Burke for prosecution in People v. Coffin, Indianapolis, Ind., Oct. 21, 1895.

FIXTURES.

Quicquid plantatur solo solo cedit.

Whatever is affixed to the soil belongs thereto.

FLIRTATION.

I answer in my own language also, in the next place, gentlemen, which I greatly prefer, that this intimacy, which since the days of Joseph Addison, has been called flirtation—a vulgar, coarse word, but one that best expresses the idea—this series of conduct, however, which we call flirtation, as circumstantial evidence to prove the fact of adultery, is wholly worthless. And this is a point on which I hope, gentlemen, at some little length, with some care—not unmindful of my duties as a parent, a citizen—to lay bare before you my views also as a lawyer, and in a court. I repeat, and I submit to your honor's direction, and upon the authorities, that this kind of intimacy that is characterized, as Mr. Coburn characterizes it also between the parties, as circumstantial evidence of the crime of adultery, is wholly worthless. . . . With propriety, with decorum, with a proper respect and regard to reputation, I agree it cannot consist, and does not consist; but with innocence of the least degree of the crime of adultery, I submit that, as circumstantial evidence, it is absolutely worthless, and upon the broad

ground that it may perfectly well exist and be committed, and yet no crime of adultery shall have been committed.

Rufus Choate, in Dalton divorce case.

FORBEARANCE.

Such is the oscitancy of man, that he lies torpid for ages under these aggressions; until at last some signal abuse—the violation of Lucrece, the death of Virginia, the oppression of William Tell—shakes him from his slumber. For years had those drunken gambols of power been played in England; for years had the waters of bitterness been rising to the brim; at last, a single drop caused them to overflow—the oppression of a single individual raised the people of England from their sleep.

John P. Curran, Trial of Judge Johnson, Court of Exchequer, Feb. 4, 1805.

FRAUD AND RIGHT OF ACTION.

Ex dolo malo non oritur actio.

A right of action cannot arise out of fraud.

FRAUDS IN CONTRACTS.

Sir, contracts do not commit fraud. Persons commit fraud. If there be fraud in a contract somebody has put it there, somebody has committed it. I would like to know how to investigate frauds in contracts without bringing into question the character and acts of individuals.

Roscoe Conkling, Speech in House of Representatives, April 2, 1862, *on Government Contracts.*

FREAKS OF FORTUNE.

The freaks of fortune are not always cruel; in the bitterness of her jocularity, you see she can adorn the miscreancy of the slave in the trappings of power, and

rank, and wealth. But her playfulness is not always inhuman; she will sometimes in her gambols, fling oil upon the wounds of the sufferer; she will sometimes save the captive from the dungeon and the grave, were it only that she might afterwards re-consign him to his destiny, by the reprisal of capricious cruelty upon fantastic commiseration.

John P. Curran, in Hevey v. Sirr, Court of King's Bench, May 17, 1802.

GAMBLING.

He said there was nothing detrimental to the character of his client except that he was a gambler. I wish I had time to read—perhaps some of you have read an article in a late number of " Harper's "—on the subject of gambling. He who shall study the question, he who shall find how it transforms mind and nerve, how it inverts the whole soul and being, will find that it renders the human mind and human hands capable of any crime on earth and may be as sometimes intoxicating liquor is, the parent and taproot of all other crimes. Nothing to be said against him but that he is a gambler, indeed!

State's Attorney Frank M. Nye, in People v. Hayward, Minneapolis, Minn., 1895.

GIFTS.

Cujus est dare ejus est disponere.

A bestower of a gift has a right to regulate its disposal.

AN ACT OF GOD.

Actus dei nemini facit injuriam.

An act of God is so treated by the law as to affect no one injuriously.

ADVANTAGES OF THE UNITED STATES GOVERNMENT.

To the Union we will look up as the temple of our freedom—a temple founded in the affections and supported by the virtue of the people. Here we will pour out our gratitude to the Author of all good, for suffering us to participate in the rights of a people who govern themselves. Is there, at this moment, a nation on the earth which enjoys this right, where the true principles of representation are understood and practised, and where all authority flows from and returns, at stated intervals, to the people? I answer, there is not. Can a government be said to be free where those do not exist? It cannot. On what depends the enjoyment of those rare, inestimable rights? On the firmness and on the power of the Union to protect and defend them.

William M. Evarts, Trial of Savannah Privateers.

AMERICAN POLITICAL GOVERNMENT.

True men, men of integrity, entertain different views from me on this subject. I do not question their right to do so; I would not impugn their motives in so doing. Nor will I undertake to say that this government of our fathers is perfect. There is nothing perfect in this world, of a human origin. Nothing connected with human nature, from man himself to any of his works. You may select the wisest and best men for your judges, and yet how many defects are there in the administration of justice? You may select the wisest and best men for your legislators, and yet how many defects are apparent in your laws? And it is so in our government.

William M. Evarts, in case of Savannah Privateers.

THE FRUITS OF GOOD GOVERNMENT.

I said a good government cannot be endangered; I say so again; for whether it be good or bad, it can never de-

pend upon assertion: the question is decided by simple inspection; to try the tree, look at its fruit: to judge of the government, look at the people. What is the fruit of a good government? The virtue and happiness of the people.

John P. Curran, Trial of A. H. Rowan, Jan'y 29, 1794.

THE GENERAL GOVERNMENT.

They determined that the people of Massachusetts, the people of New York, and the people of South Carolina, each of them, should have their own laws about agriculture, about internal trade, about marriage, about apprenticeship, about slavery, about religion, about schools, about all the every-day pulsations of individual life and happiness, controlled by communities that moved with the same pulsations, obeyed the same instincts, and were animated by the same purposes. And, as this latter class of authority contains in itself the principal means of oppression by a government, and is the principal point where oppression is to be feared by people, they had thus robbed the new system of all the dangers which attend the too extensive power of a government.

William M. Evarts, in case of Savannah Privateers.

THE THEORY AND OBJECT OF GOVERNMENT.

The general doctrine up to the time of these amendments continued to be, that the States were sovereign over their own State concerns. This complex government was curiously contrived to give liberty and safety to the people of all the States. It was fashioned by the people, in the name of the people, and for the people. Its aim was to keep the peace among the States, and to manage affairs of common concern while it left the States the entire management of their own affairs. Its founders were wise and practical men. They knew what history

had taught from the beginning of Greek civilization, that a number of small republics would perish without federation, and that federation would destroy the small republics without such a barrier as it would be impossible to pass. Liberty and safety were the ends to be won by the double and complex organization; liberty from the States and safety from the Union, and the founders thought that they had contrived a scheme which would make the States and the union essential parts of a great whole; that they had set bounds to each, which they could not pass; in short, that they had founded "liberty and union, one and inseparable."

David Dudley Field, on the Enforcement Act, U. S. Supreme Court, Washington, D. C., Oct., 1874—*trial of Cruikshank.*

THE EFFECT OF GRANTS.

Cuicunque aliquis quid concedit, concedere videtur et id sine quo res ipsa esse non potuit.

Whoever grants a thing is supposed also tacitly to grant that without which the grant itself would be of no effect.

GRANTS OF FUTURE INTERESTS.

Licet dispositio de interesse futuro sit inutilis, tamen fieri potest fieri declaratio præcedens quæ sortiatur effectum, interveniente novo actu.

Although the grant of a future interest is invalid, yet a declaration precedent may be made which will take effect on the intervention of some new act.

THE GRANTS OF PRINCIPALS.

Accessorium non ducit, sed sequitur, suum principale.

The incident shall pass by the grant of the principal, but not the principal by the grant of the incident.

THE GREATER AND THE LESS.

Omne majus continet in se minus.

The greater contains the less.

In præsentia majoris cessat potentia minoris.

In presence of the major, the power of the minor ceases.

GRIEF AND SHAME.

Grief, when its cause is shame, becomes tolerable to a certain extent when we can keep our shame to ourselves. Is it not the tendency of human nature to bury such secrets in one's own bosom? There are griefs which we delight to impart to others. When the icy hand of death has closed in its sleep the eyes of a relative or friend, we delight in imparting our anguish to those who come with warm hearts and cordial hands to administer to us the balm of consolation. But when the cause of grief is shame, man hides his diminished head, for he feels that it is diminished by the disgrace which afflicts him. Gentlemen of the jury, I ask you what must have been the anguish of Mr. Sickles at this time?

John Graham, Sickles' trial, Washington, D. C., Feb'y, 1859.

GUILT AND INTENTIONS.

Actus non facit reum nisi mens sit rea.

The act itself does not make a man guilty unless his intentions were so.

CIRCUMSTANTIAL EVIDENCE OF GUILT.

I need not pause to remind you how much caution, how much candor, and how much intelligence are requisite in appreciating circumstantial evidence in any case. That kind of evidence may clearly prove guilt. That many

times, however, it has also shed innocent blood, and many times it has stained a fair name, I need not pause for a moment to illustrate or remind you. Instead of doing that, I think I shall be better occupied, under the direction of his honor, in reminding you of the two great rules by which circumstantial evidence is to be weighed, appreciated and applied by the jury. Those rules, gentlemen, are these:

In the first place, that the jury shall be satisfied that they conduct, as a necessary result and conclusion, to the inference of guilt. It is a rule that may be called a golden rule in the examination and application of this kind of evidence which we call circumstantial, that should it so turn out that every fact and circumstance alleged and proved to exist is consistent, on the one hand with the hypothesis of guilt, and on the other hand consistent, reasonably and fairly, with the hypothesis of innocence, then those circumstances prove nothing at all. Unless they go so far as to establish as a necessary conclusion this guilt which they are offered with a view to establish, they are utterly worthless and ineffectual for the investigation of truth. I had the honor to read to the court this morning, and possibly in your hearing an authority in which that familiar and elementary doctrine was laid down, a doctrine every day applied, everywhere recognized as primary in the appreciation of this kind of evidence. It is not enough that the circumstances relied upon are plainly and certainly proved. It is not enough to show that they are consistent with the hypothesis of guilt. They must also render the hypothesis of innocence inadmissible and impossible, unreasonable and absurd, or they have proved nothing at all.

Rufus Choate, in the Dalton divorce case.

In order to justify the inference of legal guilt from circumstantial evidence, the existence of the inculpatory facts must be absolutely incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

Judge Porter, in Babcock conspiracy case, St. Louis, Feb'y, 1876.

DOUBTS OF GUILT.

Doubts of motive, doubts of acts, are always doubts of guilt; and reasonable doubts of guilt must result in acquittal.

David Paul Brown, in defense of Alex W. Holmes, Philadelphia, Pa., April, 1842.

GUILT ESTABLISHED CAN'T BE PURGED, ETC.

It is material, however, to state to you that, as soon as guilt is once established in the eye of the law, nothing that the party can do can have any sort of retrospect so as to purge that criminality, if once completed. It is out of the power of the expiring victim of a death-blow to give any release or acquittal to his murderer; it is out of the power of any human creature, upon whom an illegal offence has been committed, by any act of forgiveness to purge that original guilt; and therefore, the semblance of a marriage is entirely out of the case.

John P. Curran, Trial of Sir Henry Hayes, April 16, 1801.

THE CONDITION OF GUILT.

Wretched client! unhappy advocate! what a combination do you form! But such is the condition of guilt, its commission mean and tremulous, its defense artificial and insincere, its prosecution candid and simple, its condemna-

tion dignified and austere. Such had been the defendant's guilt, such his defense, such shall be my address, and such, I trust, your verdict.

John P. Curran, case of Massy v. Headfort, County Clare, Ireland, July 27, 1804.

THE FOUNDATION OF GUILT.

The act does not constitute guilt unless the mind be guilty. That is the great text from which the moral penal justice is deduced; it stands at the top of the criminal page, throughout all the volumes of our humane and sensible laws.

Lord Erskine, Speech against constructive treason, in defense of Lord George Gordon.

PRESUMPTION OF GUILT.

This is one of the advantages which virtue has over vice—honorable over dishonorable conduct—an advantage which it is the very highest interest of society to cherish and enforce. In proportion to the excellence of a man's character is, and ever ought to be, the violence of the presumption that he has been guilty of crime. I appeal, then, to Judge Wilkinson's character, to prove that he could not have desired this unfortunate controversy; that it is impossible he should have been guilty, under the circumstances which then surrounded him, of the crime of wilful and malicious murder. What, on the other hand, was the condition of the conspirators? Redding had been going about from street to street, like Peter the Hermit, preaching up a crusade against the Mississippians. Johnson, like Tecumseh—but, no, I will not compare him to that noble warrior—like an Indian runner, was threading each path in the city, inciting his tribe to dig up the tomahawk and drive it, not into the scalps,

but the "steaks" of the foe. But I will not pursue this point at greater length.

Sergeant S. Prentiss, in defense of Hon. Edward C. Wilkinson, of Mississippi, and others, indicted for murder, Harrodsburg, Ky., March, 1839.

THE PROOF OF GUILT DEMANDED.

What evidence then will a jury of Englishmen expect from the servants of the Crown of England, before they deliver up a brother accused before them to ignominy and death? What proof will their conscience require? What will their plain and manly understanding accept of? What does the immemorial custom of their fathers, and the written law of this land warrant them in demanding?—nothing less in any case of blood, than the clearest and most unequivocal conviction of guilt.

Lord Erskine, in defense of Lord George Gordon.

THE HABEAS CORPUS ACT.

First, then, how stood the law before? Upon this part, it would be a parade of useless learning to go farther back than the statute of Charles, the Habeas Corpus Act, which is so justly called the second Magna Charta of British liberty; what was the occasion of the law? the arbitrary transportation of the subject beyond the realm; that base and malignant war, which the odious and despicable minions of power are for ever ready to wage against all those who are honest and bold enough to despise, to expose, and to resist them.

John P. Curran, Trial of Judge Johnson, Court of Exchequer, Feb. 4, 1805.

HEIRS.

Nemo est hæres viventis.

No one can be heir during the life of his ancestor.

HESITATION.

I would add, that if he had seemed to hesitate, it was but for a moment; that his hesitation was like the passing cloud that floats across the morning sun, and hides it from view, and does so for a moment hide it, by involving the spectator, without even approaching the face of the luminary.

John P. Curran, Trial of Judge Johnson.

HOME.

One of the greatest orators of England, in speaking of the protection which the law throws around the poor man's home, says that "all the powers of the crown dare not enter the poor man's home; that it may be frail, its roof may shake, the winds of Heaven may enter, but the King himself dare not put a foot across the lowly threshold."

Alfred P. Thom, in Massey v. Pilot, Norfolk, Va., June 27, 1895.

A home in ruins! How distressing the desolation! All sublunary happiness is short-lived, at the best. That of the family circle is not exempt. One by one its members may be summoned to other spheres—to take part in other cares—to put on other relations. Death may enter its portal, and receive from its number its victims. In all this there is pain, but grief is endurable in any form but that of dishonor. *Domus amica, domus optima*—Home is home, though never so homely. The best home for us is that which receives us with the warmest heart, and welcomes us with the most cordial hand. *Intra paternos parietes*—within the walls of the family mansion. How happy, how joyous are these words. At their mention does not the memory revert, involuntarily, to the abode

of our early days, where, gathered around the family fireside, in the interchange and correspondence of love and affection, father, mother, brothers and sisters constituted a little community in themselves. Who, if we could, would not be a child again?

John Graham, in McFarland-Richardson trial, New York, May, 1870.

WHAT IS IN THE HOME.

If the door or window of your house is broken for an article of the meanest value, you may take the life of the burglar. It is only your house and its material contents that are in danger, but so tender is the regard of the written law for property, that you may arise and slay to defend it. Do your dwellings contain nothing more sacred than silver or gold? Are there not gems this minute in the circle of your households, whose lustre you would not have tarnished, or their presence torn away for all the glittering treasures of Golcondas, the Californias, and the Perus? Wives and daughters and sisters are there and the loss of one to the embrace of dishonor, would rend your hearts in twain, and plant a poison in the cup of life, which would never cease to rankle until the grave gave you peace.

Daniel W. Voorhees, in defense of H. C. Black.

FAMILY HONOR.

Who can estimate the value of family honor? Who shall lay a price on domestic happiness? Who shall remunerate you for the stolen and defiled members of your household? As well might you attempt to fix the value of a lost and ruined soul in hell. "What will a man not give for his own soul," and will he not give the same, or even a higher ransom, if need be, for the salvation of wife, mother, daughter, and sister? Without them, in

their purity, the regions of time and earth would be filled with fiery tortures, and the condition of the fallen spirits in eternity could be no worse. Can you pay the husband for his wife, the son for his mother, the brother for his sister, and the father for his daughter? Can you make atonement to the heart-broken woman herself for violated vows and wanton perfidy? Can she or any of those that love her be redeemed to their original estate by the assessment of damages? A division of property between the social outlaw and his prey may be just, but, as a mode of punishment, it is vain and void of meaning. Who, also, would have such gain? If a judgment was taken in favor of the husband or father, in whose behalf an action lies, what a revolting acquisition to his fortune it would be! In what way would he expend it?

Daniel W. Voorhees, in defense of H. C. Black.

Where is the man who does not contemplate the honor of his family as it flows from father to son with the same reverence and attachment with which he would contemplate the governmental crown as it passed from the head of the incumbent to his successors? You, all of you, know the loyalty of an Englishman to his government. Allegiance was never more strong than is that of the subject there to the sovereign. And if attachment like that can grow up between individuals and the government that grinds them down, how much stronger must be the attachment that grows up between members of the same family!

John Graham, in Sickles' trial, Washington, Feb'y, 1859.

THE HOUSE.

Domus sua cuique est tutissimum refugium.

Every man's house is his castle.

HUMAN IMPERFECTIONS.

I approach and come to this great question with that rectitude and perfect fibre of conscience which the law and your own better judgments demand. We are all, gentlemen of the jury, far, very far, from being perfect. There is no duty which men are ever called upon to perform so solemn in its nature as that of passing judgment upon motives of their fellow-beings. The poet has well said, and I repeat it—

> "In men whom men condemn as ill,
> I find so much of goodness still;
> In men whom men pronounce divine,
> I find so much of sin and blot,
> I hesitate to draw the line
> Between the two, where God has not."

Judge Porter, in Babcock Conspiracy case, St. Louis, Feb'y, 1876.

FRAILTY OF HUMAN NATURE.

There is another consideration of which we should not be unmindful. We are all conscious of the infirmities of our nature—we are all subject to them. The law makes an allowance for such infirmities. The Author of our being has been pleased to fashion us out of great and mighty elements, which make us but a little lower than the angels; but he has mingled in our composition weakness and passions. Will he punish us for frailties which nature has stamped upon us, or for their necessary results? The distinction between these, and acts that proceed from a wicked and malignant heart, is founded on

eternal justice; and in the words of the Psalmist, "He knoweth our frame—He remembereth that we are dust." Shall not the rule He has established be good enough for us to judge by?

John J. Crittenden, in Matt Ward case, Elizabethtown, Ky., April, 1854.

IDIOCY AND LUNACY.

Doth not the idiot eat? Doth not the idiot drink? Doth not the idiot know his father and his mother? He does all this because he is a man. Doth he not smile and weep? and think you he smiles and weeps for nothing? He smiles and weeps because he is moved by human joys and sorrows, and exercises his reason, however imperfectly. Hath not the idiot anger, rage, revenge? Take from him his food, and he will stamp his feet and throw his chains in your face. Think you he doth this for nothing? He does it all because he is a man, and because, however imperfectly, he exercises his reason. The lunatic does all this, and if not quite demented, all things else that man, in the highest pride of intellect, does or can do. He only does them in a different way. You may pass laws for his government. Will he conform? Can he conform? What cares he for your laws? He will not even plead; he cannot plead his disease in excuse.

William H. Seward, in the Freeman case.

THE LAUGHTER OF IDIOCY.

He laughs when the attorney-general's bolts would seem to rive his heart. He will laugh when you declare him guilty. When the judge shall proceed to the last fatal ceremony, and demand what he has to say why the sentence of the law should not be pronounced upon him, although there should not be an unmoistened eye in this vast assembly, and the stern voice addressing him should

tremble with emotion, he will even then look up in the face of the Court and laugh, from the irresistible emotions of a shattered mind, delighted and lost in the confused memory of absurd and ridiculous associations. Follow him to the scaffold. The executioner cannot disturb the calmness of the idiot. He will laugh in the agony of death. Do you not know the significance of this strange and unnatural risibility? It is a proof that God does not forsake even the poor wretch whom we pity or despise. There are, in every human memory, a well of joys and a fountain of sorrows. Disease opens wide the one, and seals up the other forever.

William H. Seward, in the Freeman case.

IMAGINATION.

The difficulty is that to do something for those to whom our affections are pledged makes us believe that imagination is fact.

Attorney General H. M. Knowlton, in People v. Sullivan et al., Lowell, Mass., June 14, 1895.

IMPLICATION AND EXPRESSION.

Expressio eorum quæ tacitè insunt nihil operatur.

The expression of what is tacitly implied is inoperative.

IMPOSSIBILITIES AND THE LAW.

Lex non cogit ad impossibilia.

The law does not seek to compel a man to do that which he cannot possibly perform.

INDICTMENTS.

The doctrine of Milton, as applied to angelic existences, that, vital in every part, they cannot, but "by annihilation, die," is not true in its application to indictments. They are mortal in every part and the destruction of one part of a count is the destruction of all parts of the same count.

One count, it is true, does not destroy another, when they are at all compatible with each other, and when an election has been made; but when the charges contained in an indictment are, as in this case, totally inconsistent, if the jury should find a verdict of guilty upon the indictment, generally, it will be subject to a motion in arrest of judgment, and it can never stand.

David Paul Brown, in defense of Alexander W. Holmes.

To this indictment, gentlemen, she has pleaded "not guilty;" and this puts the prosecution upon the proof of every material allegation necessary to sustain the charge; and this proof must be so clear that you will be able to say, upon your oaths, that her guilt is established beyond a reasonable doubt. Otherwise you must acquit her.

James Hughes, Trial of Mary Harris, Washington, D. C., July, 1865.

INDIVIDUALS.

A privileged order in a state may, in some sort, be compared to a solitary individual separated from the society, and unaided by the reciprocal converse, affections or support of his fellowmen. It is like a tree standing singly on a high hill, and exposed to the rude concussions of every varying blast, devoid of fruit or foliage. If you plant trees around it to shade it from the inclemency of the blighting tempest, and secure to it its adequate supply of sun and moisture, it quickly assumes all the luxuriance of vegetation, and proudly rears its head aloft, fortified against the noxious gales which agitate and wither the unprotected brambles lying without the verge of the plantation.

John P. Curran, Trial of Drogheda Defenders, April 23, 1794.

INFORMERS CHARACTERIZED.

Even that adamantine chain, that bound the integrity of man to the throne of eternal justice, is solved and molten in the breath that issues from the informer's mouth; conscience swings from her moorings, and the appalled and affrighted juror consults his own safety in the surrender of the victim:—

"Et quae sibi quisque timebat,
Unius in miseri exitium conversa tulere."

Informers are worshipped in the temple of justice, even as the devil has been worshipped by Pagans and savages —even so in this wicked country, is the informer an object of judicial idolatry—even so is he soothed by the music of human groans—even so is he placated and incensed by the fumes and by the blood of human sacrifices.

John P. Curran, Trial of Finnerty, Dec. 22, 1797.

INHERITANCES.

Non jus sed seisina facit stipitem.

It is not the right but the seizin, which makes a person the stock from which the inheritance must descend.

Hæreditas nunquam ascendit.

The right of inheritance never lineally ascends.

THE PLEA OF INNOCENCE.

That great interpreter of nature gives a picture in one of his plays of the innocent Prince Arthur begging for his eyes when Hubert comes in with irons to be heated red hot to burn them both out, and the piteous plea of innocent boyhood is uttered, and finally prevails. He says: "Oh, Hubert! Just you with hot irons burn out both mine eyes, these eyes that never did, and never will, frown on you. When your head did but ache, I knit my

handkerchief about your brow, the best I had. The princess wrought it me, and I did never ask it of you again, and with my hand at midnight held your aching head, and, like the watchful minutes through the hour, still and anon, cheered up the heavy time." I will not be accurate in the quotation. Soon the attendants come in. He says: "Oh, Hubert! My eyes are out, even with the fierce looks of these bloody men. Drive but these men away, and I will sit as still as a lamb; I will not move, nor wince, nor say a word, nor look upon the iron angrily," and he pleads in childish innocence until finally the attendants go back and after a time the murderous ear of Hubert is won, and the young and beautiful prince is spared for the time being.

State's Attorney Frank M. Nye, in People v. Hayward, Minneapolis, Minn., 1895.

INSANITY.

The art of the healer stops at the threshold of the diseased mind, and sinks down baffled and helpless in the presence of the delirium of woe.

Daniel W. Voorhees, in defense of H. C. Black.

The bolder and bloodier the murder the better and the more easy the escape. On the slightest provocation and most flimsy pretext, a throat is deliberately cut or a head blown off, and the assassin is suddenly discovered to have acted under an "insane impulse" that overwhelmed his "will power," and a jury of intelligent but credulous gentlemen so write it in the verdict.

Gen. Thomas M. Brown, in Foster-Hatfield case, Indianapolis, Ind., Jan., 1872.

If he killed James Fisk, and that killing was not justifiable homicide, was the prisoner sane or insane, within the meaning of the statute, passed in 1830, and which has remained upon the statute books of the state ever since, in these words: "No person shall be punished for any act committed while in a state of insanity."

Lyman Tremain, Trial of Edward S. Stokes, New York, Oct. 27, 1873.

And this is evidence of insanity? It is evidence, gentlemen of the jury, of sanity. It is woman's nature speaking out. When Lady Macbeth was reproving her husband for his irresolution, she said, "I have done the deed, but the gray-haired Duncan resembled my father as he slept." Proud, cruel, ambitious woman. Still she was a woman. So Mary Harris, having accomplished her purpose, and when she sees before her the bleeding evidence of her guilt, suffers the pangs of remorse. This is sanity. Can you interpret it to be evidence of insanity?

U. S. District Attorney Edward C. Carrington, Trial of Mary Harris.

An insane person is one who, at the time of committing the act, labored under such a defect of reason as not to know the nature and quality of the act he was doing, or if he did know it, did not know he was doing what was wrong; and the question is not whether the accused knew the difference between right and wrong *generally*, but whether he knew the difference between right and wrong in regard to the very act with which he is charged. If some controlling disease was, in truth, the acting power within him, which he could not resist, or if he had not a

sufficient use of his reason to control the passions which prompted him, he is not responsible. But it must be absolute dispossession of the free and natural agency of the mind.

William H. Seward, in the Freeman case.

INSANITY AND DELUSION.

Delusion does not always attend insanity, but when found it is the most unequivocal of all proofs. I have already observed, that melancholy is the first stage of madness and long furnished the name for insanity. In the case of Hatfield, who fired at the king in Drury Lane Theatre, Lord Erskine, his counsel, demonstrated that insanity did not consist in the absence of any of the intellectual faculties, but in delusion and that an offender was irresponsible, if his criminal acts were the immediate, unqualified offspring of such delusion. Erskine there defined a *delusion* to consist in deductions from the *immovable* assumption of the matters *as realities,* either without any foundation whatever, or so distorted and disfigured by fancy as to be nearly the same thing as their creation.

William H. Seward, in the Freeman case.

I should pronounce insanity to be a derangement of the mind, character and conduct, resulting from bodily disease. I take this word derangement, because it is one in common every day use. We all understand what is meant when it is said that anything is ranged or arranged. The houses on a street are ranged, if built upon a straight line. The fences on your farms are ranged. A tower, if justly built, is ranged; that is, it is ranged by the plummet. It rises in a perpendicular range from the

earth. A file of men marching in a straight line are in a range. "Range yourselves, men," though not exactly artistical, is not an uncommon word of command. Now what do we mean when we use the word "deranged?" Manifestly that a thing is not ranged, is not arranged, is out of range. If the houses on the street be built irregularly, they are deranged. If the fences be inclined to the right or left, they are deranged. If there be an unequal pressure on either side, the tower will lean, that is, it will be deranged. If the file of men become irregular, the line is deranged. So if a man be insane.

William H. Seward, in the Freeman case.

INSANITY AND DRUNKENNESS.

Before proceeding further, it is proper to dispose of one branch of the defendant's case, and I shall do so in a word. Drunkenness is not insanity. One who commits a crime when voluntarily intoxicated is not excused, but held to the fullest measure of accountability. Such is and always has been the law. To hold otherwise, in this day of bar-rooms and saloons, would be monstrous. Drunkenness in no sense mitigates crime purposely and intentionally committed. The learned gentlemen who have so ably conducted this defense assume, however, that drunkenness is only *voluntary*, in a legal sense, when the person gets into that condition for the purpose of preparing himself for the commission of an act. This position has the single merit of novelty; it is fortified by no reason, and supported by no authority.

Thomas M. Brown, in Foster-Hatfield trial, Indianapolis, Ind., Jan'y, 1872.

DEFENSE OF INSANITY.

How often do you hear this defense of insanity? It is relied on in every desperate case of murder, and it is

generally treated with contempt by honest and intelligent jurors. If some poor, trembling criminal in rags and tatters should dare to make such a defense as this, it would be hooted out of court. Why should a different rule be adopted in the case of Mary Harris? Why was she not subjected to the inspection of the jury? For your custom is, when the defense of insanity is made to examine the prisoner carefully for yourselves. Whenever I hear this defense of insanity, it reminds me of a remark that was made to me by my predecessor, Mr. Fendall. He had just purchased a book upon homicide. He met old Colonel Benton on the street, when the latter asked him what new work he had. He replied, "Sir, I have a work on homicide." "Why," said Colonel Benton, "your money has been misspent. There are only two defenses in cases of homicide in this country—self-defense and insanity." Colonel Benton was right, gentlemen of the jury. If a man injures another, and the injured party kills him, he pleads self-defense. If a man kills another, who has never injured him, it is said that there was no motive, and therefore he was insane.

U. S. District Attorney Edward C. Carrington, Trial of Mary Harris.

And now what is insanity? Many learned men have defined it for us, but I prefer to convey my idea of it in the simplest manner. Insanity is a disease of the body, and I doubt not, of the brain. The world is astonished to find it so. They thought for almost six thousand years, that it was an affection of the mind only. Is it strange that the discovery should have been made so late? You know that it is easier to move a burden upon two smooth rails on a level surface than over the rugged ground. It has taken almost six thousand years to learn

that. But moralists argue that insanity shall not be admitted as a physical disease, because it would expose society to danger. . . . It is the last subterfuge of the guilty, and so, is too often abused. But, however obnoxious to suspicion this defense is, there have been cases where it was true; and when true, it is, of all pleas, the most perfect and complete defense that can be offered in any human tribunal. Our Saviour forgave his judges because they knew not what they did. The insane man who has committed a crime knew not what he did. If this being, dyed with human blood, be *insane,* you and I, and even the children of our affections, are not more guiltless than he.

William H. Seward, in the Freeman case.

MAN'S INSTINCTS.

Man was made erect, and to walk erect upon the face of the earth, and when the immortal soul was breathed into his nostrils, he was invested with dignity of character, and with instincts to protect that dignity of character; and in the same way in which his instincts tell him that his God lives, he is told to defend his dignity, even to the extent of his own or his neighbor's life.

John Graham, in Sickles' trial, Washington, Feb'y, 1859.

FALSE DESCRIPTIONS IN AN INSTRUMENT.

Falsa demonstratio non nocet.

Mere false description does not make an instrument inoperative.

THE CONSTRUCTION OF INSTRUMENTS.

Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est.

In the absence of ambiguity no exposition shall be made which is opposed to the express words of the instrument.

Benignæ faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat; et verba intentioni, non e contra, debent inservire.

A liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties.

Qui haeret in litera haeret in cortice.

He who considers merely the letter of an instrument, goes but skin deep into its meaning.

Contemporanea expositio est optima et fortissima in lege.

The best and surest mode of expounding an instrument is by referring to the time when, and the circumstances under which, it was made.

INTENT.

Before we approach the question of Schuyler Haughey's intent let us see what intent means. Intent, gentlemen, is the fruit of understanding and reason. A somnambulist, walking in his sleep, has no intent. Before a man can intend to do a thing, he must understand clearly what it is that he intends to do. If I tell you a falsehood believing it to be true, I do not intend to deceive you. But if I tell you a lie, knowing it to be a lie, I do intend to deceive you.

So out of intention grows the crime. Why are insane men known to be insane? Why are they never tried for acts for which sane men are tried? Because intent is not back of their deeds. Intent is the very heart of offense.

If I borrow your money, believing that I can pay it back, and intending to pay it back, but, through misfortune, do not, I commit no crime. But if I get your money by false devices, knowing I can not pay it back and intending not to pay it back, I do commit a crime. You lose your money in either case, but I commit a crime in one case, because guilty intent is there; I do not commit a crime in the other case, because guilty intent is absent.

A. J. Beveridge, for defense in People v. Haughey, Indianapolis, Ind.

Intent, gentlemen, is the basis of all crime. It is one of the facts you must find before you can make a verdict of guilty. Moreover, there is a presumption of innocence that stands as a bulwark of protection before every citizen. It is incorporated in the law and stands for his safety until it is overcome by the evidence in the case. This presumption is made by the law as a part of the defendant's defense, which the government must remove by the testimony.

F. N. Chambers, for defense in People v. Haughey.

Thus, you will see, gentlemen, that the keystone which holds up the arch of this entire charge, is criminal intent. So that the question, "Did he do these things with which he is charged?" is the first and smallest question you have to answer; and the question, "Did he do what he did, knowing that he was committing a crime and intending to commit a crime?" is the second and the great question you have to answer. In fact, this whole case narrows down to just this and nothing more: Did this boy, with the thoughts, the knowledge, the guilty inten-

tion of a criminal, purposely commit a crime? That is, did he have the same knowledge, the same feelings, the same infamous design that a burglar has who with mask, jimmy and revolver rifles a house, and takes a life? For you must find that precisely the same kind of purpose and intention that is in the mind of the highwayman or robber, controlled and directed this boy, before you can, under the law, declare him guilty.

A. J. Beveridge, for defense in People v. Haughey.

GOOD INTENTIONS.

Plain good intention which is as easily discovered at the first view as fraud is surely detected at the last, is, let me say of no mean force in the government of mankind. Genuine simplicity of heart is a healing and cementing principle.

Edmund Burke, Speech on Conciliation with America.

INTERPRETATION.

Acta exteriora indicant interiora secreta.

Acts indicate the intention.

Ex antecedentibus et consequentibus fit optima interpretatio.

A passage will be best interpreted by reference to that which precedes and follows it.

CIVIL AND CRIMINAL INVESTIGATIONS.

The law of property changes with new objects, and becomes intricate as it extends its dominion; but crimes must be of the same easy investigation: they consist wholly in intention, and the more they are multiplied by the policy of those who govern, the more absolutely the

public freedom depends upon the peoples' preserving the entire administration of criminal justice to themselves.

Lord Erskine, Argument in the Court of King's Bench, Eng., in support of the rights of juries, Nov. 15, 1784.

THE IRISH.

I would not say a word against the Catholic church or the Irish race. There are many great men who have been of Irish descent, but there have also been some bad men. The freedom of old Ireland was lost through the treachery of her own sons.

District Attorney John Woodward, in People v. Rainey, at Mayville, N. Y., Sept. 27, 1895.

ISSUES.

We are brought face to face, man to man, soul to soul, upon the vital issue of this case. I stated to you certain principles of law. Over that ground I do not propose to travel again. The law in this case, as in every other case, is to be taken from the court.

Attorney General H. M. Knowlton, in People v. Sullivan et al., Lowell, Mass., June 14, 1895.

JEALOUSY.

A woman who loves becomes jealous upon very slight ground.

> " Trifles light as air
> Are to the jealous confirmation strong
> As proof of holy writ."

Henry N. Spaan, for prosecution, in People v. Hinshaw, Danville, Ind., Oct. 1, 1895.

JEOPARDY.

Nemo debet bis vexari pro una et eadem causa.

It is the rule of law that a man shall not be twice vexed for one and the same cause.

A HUMAN JEWEL.

The man possessing a jewel of inestimable worth, who wished, in truth, to guard its value and preserve its lustre, would wear it next the heart; but the plaintiff threw this *gaudy, worthless trinket* here and there, to be picked up by every casual finder, or let it hang so loosely from his person as to invite and, ready as it were, to bless the silly hand which, tempted by its glitter, might feel disposed to rid him of the contemptible embarrassment, and snip it from his side. It has been lost, and you are called upon to estimate the injury and to reprize the loss. You will reflect how far it was worth the keeping; you will consider what pains he took to guard it; you will appreciate the value of the article, and then determine upon what grounds, and to what extent, the plaintiff merits the interposition of a jury.

Thomas Quin, in case of Massy v. Headfort, County Clare, Ire., July 27, 1804.

THE DUTY OF A JUDGE.

The judge in open court has no compulsion brought upon him; he is independent; the Crown which appointed him to his office cannot remove him; he is not expected to deliver a judgment in accordance with any feeling he may have, but one which is wholly in accordance with well-known and recognized rules of law.

John Bright, Speech at Edinburgh, Nov. 5, 1868.

JUDGES.

Nemo debet esse judex in propria sua causa.

No man can be judge in his own cause.

Judges are but men, and in all ages have shown a full share of frailty.

Charles Sumner, Speech on Judicial Tribunals.

Who and what are the judges of courts? They are the representatives of the law; the representatives, so far as human, erring nature can be, of eternal and impartial right.

Benjamin F. Butler, in Elevated R. R. case, New York, Jan'y, 1880.

JUDGES AND JURIES.

No—God forbid! Juries ought to take their law from the bench only; but it is our business that they should hear nothing from the bench but what is agreeable to the principles of the constitution. The jury are to hear the judge, the judge is to hear the law where it speaks plain; where it does not, he is to hear the legislature. As I do not think these opinions of the judges to be agreeable to those principles, I wish to take the only method, in which they can or ought to be corrected, by a bill.

Edmund Burke, Speech in the House of Commons, March, 1771.

JUDGES AND JURISDICTION.

Boni judicis est ampliare jurisdictionem.

It is the duty of the judge, when requisite, to amplify the limits of his jurisdiction.

BRITISH JUDGES.

British judges hold their station, removable upon delinquency, punishable upon guilt, but fearless of power if they discharge their trust; liable to no seducement, and with full time and authority to execute their functions for the common good of the country and for their own glory.

Charles James Fox, Speech in the House of Commons, Dec. 1, 1783.

THE HONESTY OF JUDGES.

De fide et officio judicis non recipitur quæstio, sed de scientia sive sit error juris sive facti.

The bona fides and honesty of purpose of a judge cannot be questioned; but his decision may be impugned for error either of law or of fact.

Jefferson said that "judges are as honest as other men and not more so."

Abraham Lincoln, Reply to Douglas, fifth debate, Galesburg, Ill., Oct. 7, 1858.

FINAL JUDGMENT.

But there comes a day when the one who murdered her peace, and the one who now seeks to murder her life, will both meet their victim in the presence of the Great Judge, and in a court above the sun, where misfortune is not a crime, and where earthly distinctions fade away; where the poor are rich, and the merciful blessed; where the feeble are strong, and the oppressor's rod is broken; and in that awful presence they will be called to answer why, at their hands, Mary Harris was beaten and scourged to madness and death.

Daniel W. Voorhees, Trial of Mary Harris, Washington, July, 1865.

THE INTELLIGENT JUDGMENT OF MANKIND.

Why, sir, the jurisprudence of the world is against slavery; the literature of the world is against slavery; the civilization of the world is against slavery. Mr. Webster once said, speaking of another subject, "The lightning is strong; the tornado is strong; the earthquake is strong; but there is something stronger than all of these:

it is the enlightened judgment of mankind." That, too, is against slavery. A great man has said, "Let me write the songs of a people, and I care not who makes their laws;" and the songs, the poetry, and even the fine arts of the world, are against slavery.

Roscoe Conkling, Speech in the House of Representatives, Jan'y 30, 1861.

JUDGMENT WITHOUT TRIAL.

I feel that the night of unenlightened wretchedness is fast approaching, when a man shall be judged before he is tried—when the advocate shall be libelled for discharging his duty to his client; that night of human nature, when a man shall be hunted down, not because he is a criminal, but because he is obnoxious.

John P. Curran, Trial of Dr. Drennan, Dublin, June 25, 1794.

JUDGMENTS.

Let me remind you, my lords, while your determination is yet in your power, "*Dum versatur adhuc intra penetralia Vestæ,*" that on that ocean of the future you must set your judgment afloat. And future ages will assume the same authority which you have assumed; posterity feel the same emotions which you have felt, when your little hearts have beaten, and your infant eyes have overflowed, at reading the sad history of the sufferings of a Russell or a Sidney.

John P. Curran, Trial of A. H. Rowan, Jan'y 29, 1794.

JUDICIAL DECISIONS.

Judicial decisions have two uses—first, to absolutely determine the case decided; and secondly to indicate to the public how similar cases will be decided when they

arise. For the latter use they are called "precedents," and "authorities."

Abraham Lincoln, Speech at Springfield, Ill., Jan'y 25, 1857.

RESPECT FOR JUDICIAL DECISIONS.

What security have you for your property, for your reputation, and for your personal rights, if the courts are not upheld, and their decisions respected when once firmly rendered by the highest tribunal known to the Constitution? I do not choose, therefore, to go into any argument with Mr. Lincoln in reviewing the various decisions which the Supreme Court has made, either upon the Dred Scott case, or any other.

Stephen A. Douglas, Speech at Chicago, Feb'y 9, 1858.

JUDICIAL NOTICE.

De non apparentibus et non existentibus eadem est ratio.

Where the court cannot take judicial notice of a fact, it is the same as if the fact had not existed.

THE JUDICIAL SYSTEM OF ILLINOIS.

I am aware that once an eminent lawyer of this city, now no more, said that the State of Illinois had the most perfect judicial system in the world, subject to but one exception, which could be cured by a slight amendment; and that amendment was to so change the law as to allow an appeal from the decisions of the Supreme Court of Illinois, on all constitutional questions, to two justices of the peace.

Stephen A. Douglas, Speech at Chicago, July 9, 1858.

JUDICIAL TRIBUNALS.

It was a judicial tribunal which condemned Socrates to drink the fatal hemlock, and which pushed the Saviour barefoot over the pavements of Jerusalem, bending beneath the cross. It was a judicial tribunal which, against the testimony and entreaties of her father, surrendered the fair Virginia as a slave; which arrested the teachings of the great Apostle to the Gentiles and sent him in bonds from Judea to Rome; which, in the name of the old religion, adjured the saints and fathers of the Christian Church to death in all its most dreadful forms and which afterwards in the name of the new religion, enforced the tortures of the Inquisition, amidst the shrieks and agonies of its victims; which compelled Galileo to declare in solemn denial of the great truth he had disclosed, that the earth did not move around the sun.

It was a judicial tribunal which, in France during the long reign of her monarchs, lent itself to be the instrument of every tyranny, as during the brief Reign of Terror it did not hesitate to stand forth the unpitying accessory of the unpitying guillotine. Ay, sir, it was a judicial tribunal in England surrounded by all the forms of the law, which sanctioned every despotic caprice of Henry the Eighth, from the unjust divorce of his queen to the beheading of Sir Thomas More; which lighted the fires of persecution that glowed at Oxford and Smithfield, over the cinders of Latimer, Ridley, and John Rogers; which after elaborate argument upheld the fatal tyranny of ship money against the patriotic resistance of Hampden; which, in defiance of justice and humanity sent Sidney and Russell to the block; which persistently enforced the laws of conformity that our Puritan fathers persistently refused to obey, and which afterwards with

Jeffries on the bench crimsoned the pages of English history with massacre and murder, even with the blood of innocent women. Ay, sir, and it was a judicial tribunal in our country surrounded by all the forms of law which hung witches at Salem, which affirmed the constitutionality of the Stamp Act while it admonished jurors and the people to obey; and which now in our day has lent its sanction to the unutterable atrocity of the Fugitive Slave Law.

Charles Sumner, Speech on the Fallibility of Judicial Tribunals.

THE JURY.

It is your province to draw deductions from evidence. There seems to be an idea that as soon as a man is called to a jury box he must leave behind him all the common sense with which he is normally endowed. It seems to me it ought to be just otherwise. You ought to use all your faculties in drawing deductions from known facts.

District Attorney William S. Barnes, in People v. Durant, San Francisco, Cal.

To a jury of my countrymen I never fear to appeal. To a jury who think as I think, who were educated as I was educated, who have read the same papers that I have read, who worship at the same throne, I am always willing to come. To you I appeal with the confidence born of usage and knowledge that your verdict shall be a righteous one.

Attorney General H. M. Knowlton, in People v. Sullivan, Lowell, Mass., June 14, 1895.

You hold in your hands the balance of justice; and I ask and expect that you will not permit the prosecution

to cast extraneous and improper weights into the scale against the lives of the defendants. You constitute the mirror whose office it is to reflect, in your verdict, the law and the evidence which have been submitted to you. Let no foul breath dim its pure surface, and cause it to render back a broken and distorted image. Through you now flows the stream of public justice; let it not become turbid by the trampling of unholy feet.

S. S. Prentiss, in case of E. C. Wilkinson and others.

I have no other ambition or purpose in life than to deserve and have the respect of my fellow-citizens. Do, gentlemen, what seems to be your duty. I should be glad if my engagements should permit me to see you when your labors are through. If they do not, I hope that intervals may bring us occasionally together, and that every one of us, conscious of having done what seemed to be right in the sight of God and in the guidance of an enlightened conscience will find our days glide peacefully to a close, and our end be undisturbed by feelings that inequality and injustice shall destroy the affections and rend asunder those whom we leave behind us, and with the assurance that every child and every grandchild will bring flowers to our graves.

Benjamin Harrison, in Morrisson will case, Indianapolis, Ind., 1895.

DUTY OF JUDGE AND JURY.

Ad quæstionem facti non respondent judices, ad quæstionem legis non respondent juratores.

It is the office of the judge to instruct the jury in points of law—of the jury to decide on matters of fact.

THE GROWTH OF THE JURY SYSTEM.

I do not assert that the jury trial is an infallible mode of ascertaining truth. Like everything human, it has its imperfections. I only say, that it is the best protection for innocence and the surest mode of punishing guilt that has yet been discovered. It has borne the test of a longer experience, and borne it better, than any other legal institution that ever existed among men. England owes more of her freedom, her grandeur, and her prosperity, to that than to all other causes put together. It has had the approbation not only of those who lived under it, but of great thinkers who looked at it calmly from a distance, and judged it impartially. Montesquieu and De Tocqueville speak of it with an admiration as rapturous as Coke and Blackstone. Within the present century, the most enlightened states of continental Europe have transplanted it into their countries; and no people ever adopted it once and were afterwards willing to part with it. It was only in 1830 that an interference with it in Belgium provoked a successful insurrection which permanently divided one kingdom into two. In the same year, the Revolution of the Barricades gave the right of trial by jury to every Frenchman.

Those colonists of this country who came from the British Islands brought this institution with them, and they regarded it as the most precious part of their inheritance. The immigrants from other places where trial by jury did not exist, became equally attached to it as soon as they understood what it was. There was no subject upon which all the inhabitants of the country were more perfectly unanimous than they were in their determination to maintain this great right unimpaired. An attempt was made to set it aside and substitute military trials in its place, by Lord Dunmore, in Virginia, and General Gage,

in Massachusetts, accompanied with the excuse which has been repeated so often in late days, namely, that rebellion had made it necessary; but it excited intense popular anger, and every colony from New Hampshire to Georgia made common cause with the two whose rights had been especially invaded. Subsequently, the Continental Congress thundered it into the ear of the world, as an unendurable outrage, sufficient to justify universal insurrection against the authority of the government which had allowed it to be done.

Judge Jeremiah S. Black, in the Milligan case, Washington, D. C., Dec., 1866.

THE HISTORY OF TRIAL BY JURY.

I might begin with Tacitus, and show how the contest arose in the forests of Germany more than two thousand years ago; how the rough virtues and sound common sense of that people established the right of trial by jury, and thus started on a career which has made their posterity the foremost race that ever lived in all the tide of time. The Saxons carried it to England, and were ever ready to defend it with their blood. It was crushed out by the Danish invasion; and all that they suffered of tyranny and oppression, during the period of their subjugation, resulted from the want of trial by jury. If that had been conceded to them the reaction would not have taken place which drove back the Danes to their frozen homes in the north. But those ruffian sea-kings could not understand that, and the reaction came. Alfred, the greatest of revolutionary heroes and the wisest monarch that ever sat on a throne, made the first use of his power, after the Saxons restored it, to re-establish their ancient laws. He had promised them that he would, and he was true to them because they had been true to

him. But it was not easily done; the courts were opposed to it, for it limited their power—a kind of power that everybody covets—the power to punish without regard to law. He was obliged to hang forty-four judges in one year for refusing to give his subjects a trial by jury. When the historian says he hung them, it is not meant that he put them to death without a trial. He had them impeached before the grand council of the nation, the Wittenagemote, the parliament of that time. During the subsequent period of Saxon domination no man on English soil was powerful enough to refuse a legal trial to the meanest peasant. If any minister or any king, in war or in peace, had dared to punish a freeman by a tribunal of his own appointment, he would have roused the wrath of the whole population; all orders of society would have resisted it; lord and vassal, knight and squire, priest and penitent, bocman and socman, master and thrall, copyholder and villein, would have risen in one mass and burnt the offender to death in his castle, or followed him in his flight and torn him to atoms. It was again trampled down by the Norman conquerors; but the evils resulting from the want of it united all classes in the effort which compelled King John to restore it by the Great Charter. Everybody is familiar with the struggles which the English people, during many generations, made for their rights with the Plantagenets, the Tudors, and the Stuarts, and which ended finally in the revolution of 1688, when the liberties of England were placed upon an impregnable basis by the Bill of Rights. Many times the attempt was made to stretch the royal authority far enough to justify military trials; but it never had more than temporary success.

Judge Jeremiah S. Black, in the Milligan case, U. S. Supreme Court, Washington, D. C., Dec., 1866.

TRIAL BY JURY.

What did Edmund Burke mean when he said that the greatest object of civil government was to get twelve honest men into the jury box? What becomes of that principle inwrought with every jurisprudence, from the twelve tables down, which gave the Athenian and has given the meanest culprit ever since, the right to say, "Strike, but hear me!"

Roscoe Conkling, Speech in House of Representatives, April 29, 1862, on Government contracts.

The best security for the rights of individuals is to be found in the trial by jury. But the excellence of this institution consists in its exclusive power. The jury are here judges of law and fact, and are responsible only to God, to the prisoner and to their own consciences.

William Pinkney, in defense of John Hodges, Baltimore, May, 1815.

THE VALUE OF JURY TRIALS.

I know you are called out to-day to fill up the ceremonial of a gaudy pageant, and that to-morrow you will be flung back again among the unused and useless lumber of the constitution; but trust me, the good old trial by jury will come round again; trust me, gentlemen, in the revolution of the great wheel of human affairs, though it is now at the bottom, it will re-ascend to the station it has lost, and once more assume its former dignity and respect.

John P. Curran, Trial of Napper Tandy, Court of King's Bench, London, May 19, 1800.

DUTIES OF JURIES.

Gentlemen of the jury, I have about concluded my duties in this cause. Yours will follow. I ask from you

nothing in the world but the intelligent judgment of twelve intelligent men on the evidence before you. I have only one little picture more to offer. It is Burns's picture of the Scottish farmer in the seclusion of his family. His day's work done, he draws his little family about him. He has laid aside his cap and has taken the old family Bible from its shelf. He calls Jane and James and the old mother and reads to them from God's promises. Then all bow their heads in prayer. "In scenes like these old Scotia's grandeur lies." Some of you here are wont to keep that sacred family tryst. Into that tryst you would never admit this paper.

General Black, in People v. Dunlap, New York, Feb'y 4, 1896.

It is not a pleasant duty to render a verdict of murder in the first degree, even if you find the evidence warrants it, but you are here, gentlemen, as the representatives of justice and must perform your duty. I can readily understand how you shrink from finding such a verdict as this, but I appeal to your manhood, your sense of right and justice. I ask you to do what the Crier of the Court asked you to do, "Stand together, good men and true." I ask you to complete the work the law has passed upon you, manfully, honestly and well, declaring the result of your judgment, no matter what the consequences may be to this man or to the Commonwealth. It requires courage, I know, to do this, but I trust to your honor as men. It requires justice to be done here, and to carry out this justice it requires just as much courage as it does upon the battlefield; just as much courage as it does to face the cannon's mouth or to charge regiments; aye, it requires a higher courage to sit in the jury box as the representatives of the law and discharge your duty.

I ask you to stand together as men, and if you find the prisoner is guilty, be true to your conscience, true to your God, true to yourselves, and discharge your duty faithfully in the sight of God and in the sight of man, remembering that you are not responsible for his fate, remembering that his fate was sealed in the silence of that Sunday at No. 1316 Callowhill street. He began the work, he wrought the fetters and created the circumstances that put him in this dock to-day on trial for his life.

District Attorney George S. Graham, in People v. Holmes, Phila., Pa., 1895.

They know, as well as I do, that the great object of a jury is to protect the country against crimes, and to protect individuals against all accusation that is not founded in truth. They will remember—I know they will remember, that the great object of their duty is, according to the expression of a late venerated judge, in another country, that they are to come into the box with their minds like white paper, upon which prejudice, or passion, or bias, or talk, or hope, or fear, has not been able to scrawl any thing; that you, gentlemen, come into the box, standing indifferent as you stand unsworn.

John P. Curran, Trial of Rev. William Jackson, Dublin, April 23, 1795.

Whether the punishment is to be an hour or a year, it is an infamous punishment; and you should be equally cautious in resting your verdict upon unquestionable and unsatisfactory proof. I marvel, indeed, that my learned friend, while haranguing you upon the enormity of this offense, should attempt soothing you into a verdict by the

suggestion that it would probably be attended with no evil to the defendant. Allow me to deprecate this questionable mercy. It is calculated, if not designed, to seduce you from allegiance to your duties. If the defendant be guilty, he should meet the rigor of the law; if innocent, his rights should not be compromised by the imaginary insignificance of his anticipated punishment. I make no claims upon your charity; my appeals are to your justice.

David Paul Brown, in defense of Alexander William Holmes, indicted for manslaughter on the high seas.

Gentlemen, I commit this case to you in the sublime language of the great orator who speaks to you from his grave at Marshfield: "With conscience satisfied with the discharge of duty, no consequences can harm you. There is no evil that we cannot either face or fly from but the consciousness of duty disregarded. It is omnipresent, like the Deity. If we take to ourselves the wings of the morning and dwell in the uttermost parts of the earth, duty performed or duty violated is still with us for our happiness or misery, and if we say darkness shall cover us, in darkness as in the light our obligations are yet with us. We cannot escape their power nor fly from their presence. They are with us in this life, will be with us at its close, and * * * yet further onward we shall still find ourselves surrounded by the consciousness of duty to pain us wherever it has been violated, and to console us so far as God may have given us grace to perform it."

William A. Beach, Trial of Henry Ward Beecher, Brooklyn, N. Y., Jan'y, 1875.

(Andrew Johnson) was tried by a tribunal over which Chief Justice Chase presided, and where the jury who were to pronounce the verdict were the senators of the American states. Those senators were not his political or his personal friends. A large majority of them were his political adversaries, driven to indignation by a supposed betrayal of trust reposed in him by the party who elevated him to power. It embraced many bitter personal enemies. But, gentlemen, the case went to them upon the evidence. The politicians ceased to be such. The senators became sworn jurors. They determined the case not upon antecedent prejudice, but upon the evidence of their honest convictions, and Andrew Johnson was acquitted. The newspaper judgment was reversed, and what has been the sequel? After the expiration of President Johnson's term, Tennessee returned him as senator, to the very capitol in which he had been arraigned as a criminal.

Judge Porter, in Babcock conspiracy case, St. Louis, Mo., Feb'y, 1876.

You are to judge of his conduct as if you had been in his situation. That is your duty to-day. I state it in the hearing of the court, and in the presence of my professional brethren. You are not to estimate his guilt or innocence by the appearance of the circumstances to a cool, indifferent, and disinterested observer. You are to put yourselves in his place, assume his relations to others, imbibe his affections, and survey everything from his point of view.

Daniel W. Voorhees, in defense of H. C. Black.

DUTIES OF PETIT JURIES.

My lords, the law of this country has declared that in

order to the conviction of any man, not only of any charge of the higher species of criminal offenses, but of any criminal charge whatsoever, he must be convicted upon the finding of two juries; first, of the grand jury, who determine upon the guilt in one point of view; and, secondly, by the corroborative finding of the petty jury, who establish that guilt in a more direct manner; and it is the law of this country, that the jurors who shall so find, whether upon the grand, or whether upon the petty inquest, shall be *probi et legates homines omni exceptione majores.*

John P. Curran, Trial of Henry Sheares for high treason, Dublin, July 4, 1798.

You have a solemn duty to perform, and I want you to perform it. I want you to perform it like men—like honest men. I ask your sober judgment on the case, but it is right for that judgment to be tempered with mercy. It is according to the principles of law, one of whose maxims tells you "it were better for one hundred guilty men to escape than for an innocent one to be punished." Is not here your commission for mercy? It is alike your honest minds and your warm hearts that constitute you the glorious tribunal you are—that make this jury of peers one of the noblest institutions of our country and our age. But the gentlemen would make you a set of legal logicians—calculators, who are to come to your conclusion by the same steps a shop-keeper takes to ascertain the quantity of coffee he has sold by the pound. That may be a jury in name, but it is nothing else.

John J. Crittenden, in Matt Ward case, Elizabethtown, Ky., April, 1854.

THE LIBERTY OF JURIES.

Whatever verdict a jury can pronounce upon him can be of no final avail. There was, indeed, a time when a jury was the shield of liberty and life; there was a time when I never rose to address it without a certain sentiment of confidence and pride; but that time is past. I have now no heart to make any appeal to your indignation, your justice, or your humanity. I sink under the consciousness that you are nothing.

John P. Curran, Trial of Napper Tandy, Court of King's Bench, May 19, 1800.

JUSTICE.

Justice does not mean severity. Justice does not mean blind revenge. Justice means the justice of men as God Himself judges men, in the light of kindness and sincerity.

David S. Rose, for defense in People v. Luscombe, Milwaukee, Wis., June 20, 1895.

JUSTICE CHARACTERIZED.

Justice may weep; but she must strike where she ought not to spare. We, too, may lament; but, when we mourn over crimes, let us take care that there be no crimes of our own upon which our tears should be shed.

John P. Curran, Trial of Sir Henry Hayes, Cork, April 16, 1801.

FAITHLESS ADMINISTRATION OF JUSTICE.

Courts, and indeed governments, are powerless in the punishment of the guilty unless juries fearlessly do their duty. A faithless and imperfect administration saps the foundations of society, and excites the people to anarchy and misrule. We need not go far to find the illustration. In our own proud Indiana, with its schools, Bibles, and

churches, within the last year or two a number of victims have been immolated by the demon mob. Administer the law, purify the fountains of justice, protect society from the vicious, and society will feel safe and good order will reign within our borders. Let me appeal to you to do your whole duty in this case, even though your verdict "may touch the heart of a mother or a sister." Punishment must be certain, that society may be safe. It is sometimes necessary to make an example, and if there was such a time it is upon us now.

Thomas M. Brown, in Foster-Hatfield trial, Indianapolis, Ind., Jan'y, 1872.

IN A COURT OF JUSTICE.

At last the case has reached a court of justice, where the sides can be heard, and where the hot breath of passion and faction does not mildew reason. The plaintiff has had a full hearing, so has the defendant. The directors and the plaintiff, in contesting the large sum at stake, have acted only as trustees for all the men and all the women and all the children who make up the stockholders, and whose gain or loss the result must be.

Roscoe Conkling, in New York Central R. R. tax case, 1874.

JUSTICE OF THE LAW.

Actus legis nemini est damnosus.

An act in law shall prejudice no man.

THE ADMINISTRATION OF JUSTICE.

Every human tribunal ought to take care to administer justice, as we look, hereafter, to have justice administered to ourselves.

Lord Erskine, Speech in defense of John Stockdale, tried for libel in the Court of King's Bench, Westminster, Eng., Dec. 9, 1789.

Under what obligations can I call upon you, the jury representing your country, to administer justice? Surely upon no other than that you are sworn to administer it under the oaths you have taken. The whole judicial fabric from the King's sovereign authority to the lowest office of magistracy, has no other foundation. The whole is built both in form and substance upon the same oath of every one of its ministers to do justice, as God shall help them hereafter. What God? And what hereafter? That God undoubtedly who has commanded kings to rule and judges to decree justice; who has said to the witnesses not only by the voice of nature but in revealed commandments—Thou shalt not bear false testimony against thy neighbor—and who has enforced obedience to them by the revelation of those unutterable blessings which shall attend their observance and the awful punishment which shall await upon their transgressions.

Lord Erskine, Speech in defense of Thomas Williams, the publisher of the "Age of Reason," Court of King's Bench, Westminster, June 24, 1797.

THE TEMPLE OF JUSTICE.

Therefore, I leave my client with you. He has fled to the temple of justice—he has fallen upon its steps. I trust in divine Providence, that he will find there a sanctuary, and that your lordships will order him to be discharged from the custody in which he is now detained.

John P. Curran, Trial of Judge Johnson, Court of Exchequer, Feb'y 4, 1805.

THE TIES OF KINDRED.

There are many strange things in this world, and the condition which prevails in this family may be among the strangest known to man. I realize the strength of the ties of kindred. I realize that God has planted in the

human breast that spirit of protection, not alone to self, but to relatives, to brother, to father, to mother, or to child or to wife.

State's Attorney Frank M. Nye, in People v. Hayward, Minneapolis, Minn., Dec., 1895.

THE POSSESSION OF LAND.

Cujus est solum, ejus est usque ad coelum.

He who possesses land, also possesses that which is above it.

THE LAW.

To elevate the morals of our people, to hold up the law as that sacred thing which, like the ark of God of old, may be touched by irreverent hands, but frowns upon any intention to dethrone its supremacy; to unite our people in all that makes home comfortable, as well as to give our energies in the direction of material advancement—this service may we render.

Benjamin Harrison, Speech in New York City, April 30, 1889.

There is a maxim of the law, that where the reason ceases, the law itself ceases. It is not only a maxim of common law, but equally of common sense.

Thomas F. Bayard, Speech in U. S. Senate, Jan'y 24, 1877.

But how much nobler will be the sovereign's boast when he shall have it to say, that he found law dear and left it cheap; found it a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword of craft and oppres-

sion, left it the staff of honesty and the shield of innocence.

Lord Brougham, Speech on Law Reform.

Reason is the life of the law; nay, the common law itself is nothing else but reason.

Sir Edward Coke.

To make an empire durable, the magistrates must obey the laws, and the people the magistrates.

Solon.

Equity judgeth with lenity, laws with extremity. In all moral cases, the reason of the law is the law.

Sir Walter Scott.

We should never create by law what can be accomplished by morality.

Montesquieu.

The universal and absolute law is that natural justice which cannot be written down, but which appeals to the heart of all. Written laws are formulas in which we endeavor to express the least imperfectly possible that which, under such or such determined circumstances, natural justice demands.

Victor Cousin.

Gentlemen, we live in a land of law. Our law is the express will of the people. It is enforced by the govern-

ment, which is the agent, the creature of the people—in other words, the people organized. But what is the law, the will of the people, which is the only sovereign we obey? Where does it abide, and what does it do? It is the body of principles and rules, which the people have adopted and enacted for the establishment of rights, and the prevention, redress and punishment of wrongs. It is everywhere, like the atmosphere which we breathe. It is the vital air, in which all rights live, and it is mortal to all wrongs and crimes. It is full of life and power to preserve life, and to make it safe and sweet—to prevent all crimes against it before they are committed, and to punish them after they have been accomplished. It is the law that protects all in all places; and pursues him who violates it to the injury of others, to avenge them. It teaches all to avoid collisions and harm on the highways, by admonishing each "to keep to the right." It is so common, so universal, so essential, that, grown used to it, it is only in its violations, and the retributions with which it follows them, that we realize its presence, at least, in so far as our natural rights and duties are concerned.

Major J. W. Gordon, in Evans' homicide case, New Albany, Ind., May, 1866.

LAW AND COMMON ERROR.

Communis error facit jus.

Common error sometimes passes current as law.

THE LAW AND MURDER.

O no, our law isn't so weak as that. It is a broad, glorious law that we live under, weak sometimes in execution, but as strong as ten centuries can make it. My learned friend has said that murder is the highest crime but one. It is the highest crime, the first one committed

in the world. It is that sad, sad crime that takes away that which can never be replaced.

Attorney General H. M. Knowlton, in Commonwealth v. Sullivan et al., Lowell, Mass., June 14, 1895.

LAW AND ORDER.

Everywhere there is order; everywhere there is security. Everywhere the law reaches to the highest, and reaches to the lowest, to protect him in his rights, and to restrain him from wrong; and over all hovers liberty, that liberty which our fathers fought and fell for on this very spot, with her eyes ever watchful and her eagle wing ever wide outspread.

Daniel Webster, Address at the completion of the Bunker Hill Monument, Charlestown, Mass., June, 1845.

EQUALITY AND JUSTICE IN LAW.

It must not be equality and justice in the written law only, but equality and justice in the law's administration, alike afforded in every part of the republic, and literally secured to every citizen thereof.

William McKinley, Speech at Ironton, Ohio, Oct. 1, 1885.

LAW FOUNDED ON FREE CONSENT.

Our theory of law is free consent. That is the granite foundation of our whole superstructure. Nothing in this republic can be law without consent—the free consent of the House; the free consent of the Senate; the free consent of the Executive, or if he refuses it, the consent of two-thirds of these bodies. Will any man challenge a line of the statement that free consent is the foundation rock of all our institutions?

James A. Garfield, Speech in Congress.

KNOWLEDGE OF THE LAW.

There is, indeed, a rule of law, said to be essential to the existence of society, that all men must be taken to know the law, except, I might add, lawyers and judges, who seldom agree upon any proposition until they must.

James T. Brady, in case of Savannah Privateers.

IGNORANCE OF THE LAW DOES NOT EXCUSE.

Ignorantia facti excusat; ignorantia juris non excusat.

Ignorance of fact excuses; ignorance of the law does not excuse.

INNOVATIONS OF THE LAW.

Omnis innovatio plus novitate perturbat quam utilitate prodest.

Every innovation occasions more harm and derangement of order by its novelty than benefit by its abstract utility.

THE LAW MUST BE PROSPECTIVE, ETC.

Nova constitutio, futuris formam imponere debet, non præteritis.

A legislative enactment ought to be prospective, not retrospective, in its operation.

THE LAW NO RESPECTER OF THEORIES.

The law of England pays no respect to theories, however ingenious, or the authors however wise; and therefore, unless you hear me refuted by a series of direct precedents, and not by vague doctrine—if you wish to sleep in peace, follow me.

Lord Erskine, Speech against constructive treason, in defense of Lord George Gordon.

OBEDIENCE TO LAW PROTECTED.

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est.

Where a person does an act by command of one exercising judicial authority, the law will not suppose that he acted from any wrongful or improper motive, because it was his bounden duty to obey.

THE LAW OF TRIFLES.

De minimis non curat lex.

The law does not concern itself about trifles.

PRACTICE OF THE LAW.

The law is a science. It is no mere trade. It is not the road to wealth. There is, in our society, no branch of business, no mechanic art, which is not a better avenue to riches. Lawyers, indeed, sometimes grow rich in the speculations of the world. Such run the risk of sacrificing their profession to their interest. For law is a jealous mistress, and exacts devotion of heart and life. She often honors her disciple; but, in this country, she rarely enriches him. Great lawyers, not otherwise enriched, always or almost always, die poor. Wealth, too, is a jealous god, and those who worship at its shrine must surrender heart and life to their idol. What we call the learned professions are, therefore, not among the thoroughfares of fortune. It is generally the successful lawyer's lot to spend life in the luxury of refined and elegant poverty. The lawyer, indeed, must live and receive his *quiddam honorarium*. But this is the incident, not the aim, of professional life. The pursuit of the legal profession, for the mere wages of life, is a mistake alike of the means and

of the end. It is a total failure of appreciation of the character of the profession.

Chief Justice Ryan, before the law class of the University of Wisconsin, June, 1880.

PRINCIPLES OF THE ENGLISH LAW.

The principles of the English law are sufficiently clear. They are founded in reason and are masterpieces of the human understanding; but it is in the text that I would look for direction in my judgment, not in the commentaries of modern professors.

Lord Chatham, Speech in the House of Lords, in reply to Lord Mansfield on the Amendment of the Address, etc., —1770.

REVERENCE FOR LAW.

My Lords, I am a plain man, and have been brought up in religious reverence for the original simplicity of the laws of England.

Lord Chatham, Speech in the House of Lords, 1770.

SECURITY UNDER THE LAW.

If I were to ask you, gentlemen of the jury, what is the choicest fruit that grows upon the tree of English liberty, you would answer, security under the law. If I were to ask the whole people of England, the return they looked for at the hands of the government, for the burdens under which they bend to support it, I should still be answered, security under the law; or, in other words, an impartial administration of justice. So sacred therefore has the freedom of trial been ever held in England, so anxiously does justice guard against every possible bias in her path, that, if the public mind has been locally agitated upon

any subject in judgment, the forum has either been changed or the trial postponed.

Lord Erskine, in defense of Thomas Paine, tried for libel.

Law, alone, has accomplished what all the natural feelings were not able to do; law, alone, has been able to create a fixed and durable position, which deserves the name of Property. The law, alone, could accustom men to submit to the yoke of foresight, at first painful to be borne, but, afterwards agreeable and mild; it alone could encourage them in labor—superfluous at present, and which they are not to enjoy till the future. Economy has as many enemies as there are spendthrifts, or men who would enjoy without taking the trouble to produce. Labor is too painful for idleness; it is too slow for impatience; Cunning and Injustice underhandedly conspire to appropriate its fruits; Insolence and Audacity plot to seize them by open force. Hence Society, always tottering, always threatened, never at rest, lives in the midst of snares. It requires, in the legislator, vigilance continually sustained, and power always in action, to defend it against his constantly reviving crowd of adversaries.

The law does not say to a man, "Work, and I will reward you;" but it says to him, "Work, and by stopping the hand that would take them from you, I will insure to you the fruits of your labor, its natural and sufficient reward, which, without me, you could not preserve." If industry creates, it is the law which preserves; if, at the first moment, we owe everything to labor, at the second, and every succeeding moment, we owe everything to the law.

In order to form a clear idea of the whole extent which ought to be given to the principle of security, it is necessary to consider, that man is not like the brutes, limited to the present time, either in enjoyment or suffering; but that he is susceptible of pleasure and pain by anticipation, and that it is not enough to guard him against an actual loss, but also to guarantee to him, as much as possible, his possessions against future losses. The idea of his security must be prolonged to him throughout the whole vista that his imagination can measure.

Jeremy Bentham.

Look for a moment through our entire code of laws, and you will find there "a rule of action, enforcing what is right, and prohibiting what is wrong"—intended to curb the depraved and licentious passions of men, which may perhaps, in individual cases, operate harshly, but the general influences of which are beneficial and salutary.

We have a law requiring all carriages meeting upon the highway to turn to the right. We have a law requiring druggists to label all medicines which are highly destructive to animal life, "Poison." By law no man is permitted to burn his house, though he may destroy it in any other way he pleases. And here again the lawgiver presumes to know what is just and proper to the exclusion of the opinions of the individual; and yet this has, so far, remained unassailed.

A dissolution of the marriage contract is expressly prohibited unless declared by a court of equity for cause; and that, too, though a Socrates and Xantippe are bound together in the silken cords, and although they both desire the relation, because the legislature assumes to know what is just in the premises, better than the parties; and who has murmured at the existence of such a law? In short,

all the laws of society are more or less arbitrary in their character; they are but the declared opinions of the people through their representatives—intended for the general good.

Daniel S. Dickinson, Speech on the repeal of the usury laws, N. Y. State Senate, Feb'y 10, 1837.

SUBMISSION TO THE LAW.

The true view of the matter is, that every man is presumed to submit to all power which may be lawfully exercised over him or his right, and no one should be presumed to submit to illegal acts of power, whether actual or contingent.

Daniel Webster, in case of Ogden v. Saunders, Washington, Jan'y, 1827.

THE ASSISTANCE OF THE LAW.

Vigilantibus, non dormientibus, jura subveniunt.

The laws assist those who are vigilant, not those who sleep over their rights.

THE ENFORCEMENT OF THE LAW.

But if criminals are to escape, simply because their punishment will affect the lives of the innocent who are connected with them by bonds of blood, or marriage, or friendship, there would be no punishment for crime. The State of Indiana must enforce the law against all criminals.

"Law is the deep, august foundation upon which peace and justice rest;
Upon the rock primeval hidden deep its bases be,
And block by block the endeavoring ages have wrought it up to what we see."

Henry N. Spaan, in People v. Hinshaw, Danville, Ind., Oct. 1, 1895.

THE EXECUTION OF THE LAW.

Executio juris non habet injuriam.

The law will not in its executive capacity work a wrong.

The laws of the United States must be executed. I have no discretionary power on the subject; my duty is emphatically pronounced in the Constitution. Those who told you that you might peaceably prevent their execution deceive you; they could not have been deceived themselves. They know that a forcible opposition could alone prevent the execution of the laws, and they know that such opposition must be repelled. Their object is disunion, by armed force is treason. Are you really ready to incur its guilt? If you are, on the heads of the instigators of the act be the dreadful consequences; on their heads be the disorder, but on yours may fall the punishment.

Andrew Jackson, Proclamation against Nullification.

THE LANGUAGE OF THE LAW.

What the law has said I say. In all things else I am silent. I have no organ but for her words. This, if it be not ingenious, I am sure is safe.

Edmund Burke, Speech on moving resolutions for Reconciliation with America, House of Commons, March 22, 1775.

THE LETTER OF THE LAW.

On a simple letter of the law I take my stand, and do not go beyond what is there nominated. The masses of men are not better than their law.

Charles Sumner, Address at the Metropolitan Theatre, New York city, May 9, 1855.

THE MISSION OF THE LAW.

The mission of the law, as the chosen apostle of freedom, has always been to succor the oppressed, the feeble, the suffering and the poor, and to minister, in the spirit of the great Master, to those whom Christ blessed upon the mountain of Olives.

Daniel W. Voorhees, Speech on the Liberty of the Citizen, House of Representatives, Feb'y 8, 1868.

THE OBEDIENCE TO LAW.

Hutchinson, at that time Lieutenant Governor and Judge in Massachusetts, wrote to a minister in England: "The Stamp Act is received with as much decency as could be expected. It leaves no room for evasion, and will execute itself." Like the judges of our day, in charges to grand juries, he resolutely vindicated the Act, and admonished the jurors and the people to obey like the governors of our day. Bernard, in his speech to the Legislature of Massachusetts, demanded unreasoning submission. "I shall not," says this British Governor, "enter into any disquisition on the policy of this act. I have only to say that it is an act of the Parliament of Great Britain, and I trust that the supremacy of that parliament over all the members of their wide and diffused empire never was and never will be denied within these walls." Like marshals of our day, the officers of the customs made "application for a military force to assist them in the execution of their duty." The military were against the people. A British Major of artillery at New York exclaimed, in tones not unlike those sometimes now heard, "I will cram the stamps down their throats with the end of my sword." The elaborate answer of Massachusetts—a paper of historical grandeur—drawn by Samuel Adams, was pronounced "the rav-

ings of a parcel of wild enthusiasts." Thus in those days spoke the partisans of the Stamp Act. But their weakness soon became manifest. In the face of an awakened community where discussion has free scope, no men, though surrounded by office and wealth, can long sustain injustice. Earth, water, nature, they may subdue. Subtile and mighty against all efforts and devices, it fills every region of light with its majestic presence. The Stamp Act was discussed and understood. Its violation of constitutional rights was exposed.

Charles Sumner, Speech in the U. S. Senate, August 26, 1852, on his motion to repeal the Fugitive Slave Bill.

A man is bound to obedience, and punishable for disobedience of laws:—first, because, by living within their jurisdiction, he avails himself of their protection—and this is no more than the reciprocity of protection, and allegiance on a narrower scale; and, secondly, because, by so living within their jurisdiction, he has the means of knowing them, and cannot be excused because of his ignorance of them.

John P. Curran, Trial of Judge Johnson, Court of Exchequer, Feb'y 4, 1805.

THE PROFESSION OF THE LAW.

The very business of our profession is to study out the rights of other men, and to observe them; and therefore a lawyer, above all others, before every tribunal, whether it be erected in the arch of the heavens above, or upon the face of the earth, is entitled to the least charitable consideration, for such misdeeds as are wanton encroachments upon what belongs to his neighbor.

John Graham, in Sickles' trial, Washington, Feb'y, 1859.

Business men may have a lucky stroke of fortune; preachers may buy or borrow sermons; quacks may win riches by a patent medicine, but the lawyer can rely on no one but himself. He is like the knight in the ancient tournament, when the herald sounded the trumpet, and rode down the lists—whether he splintered his enemy's lance, or was unhorsed himself, depended upon his own prowess and skill.

Chauncey M. Depew, Address before Columbia Law School, March 17, 1884.

I belong, sir, to a profession which is glorious in history. I rejoice that I have spent some days of my manhood in the study of a science in the adornment of which Erskine and Curran, Webster and Grimke, spent their lives. The legal profession has had much to bear in the hostile criticism provoked by an unworthy class who inhabit the vestibule of her temple, and allure to their meshes the unwary pilgrims who seek her shrine for substantial relief. The artful trickery of ignoble minds has been assigned as an attribute of the profession of the law, and its lower walks; that pestilential brood which swarms around the base of the pedestal of honorable fame, has, to the casual observer, sanctioned such a view. But this is all unjust. There is an atmosphere near the sun in which the great jurists of twenty generations dwell. They have been the forerunners of legal liberty. They have never hung upon the skirts of governmental progress. Other professions have formed technical barricades against the advance of popular freedom, and questioned the divinity of the people; but those who have drunk deep from the fountain of that "perfection of reason," English and American law, recognize the voice

of the people as the voice of God. It is matter of record that the legal profession has been the patient, the toiling, and the inspired handmaiden of liberty.

Daniel W. Voorhees, Speech on the Liberty of the Citizen, House of Representatives, Feb'y 8, 1868.

THE PROTECTION OF THE LAW.

Burke said in one of those immortal orations which emptied the House of Commons, but which will be read with admiration, so long as the English tongue shall endure, that when the laws of Great Britain were not strong enough to protect the humblest Hindoo upon the shores of the Ganges, the nobleman was not safe in his castle upon the banks of the Thames.

John J. Ingalls, Speech in the U. S. Senate, Jan'y 14, 1891, *on the Evils that threaten the Republic.*

Gentlemen, all you possess on earth is the reward of labor protected by law. It is law alone which keeps all things in order, guards the sleep of infancy, the energy of manhood, and the weakness of age. It hovers over us by day; it keeps watch and ward over the slumbers of the night; it goes with us over the land, and guides and guards us through the trackless paths of the mighty waters. The high and the low, each are within its view, and beneath its ample folds. It protects beauty and virtue, punishes crime and wickedness, and vindicates right. Honor and life, and liberty, and property, the wide world over, are its high objects. Stern, yet kind; pure, yet pitying; steadfast, immutable and just; it is the attribute of God on earth. It proceeds from His bosom, and encircles the world with its care and power and bless-

ings. All honor and praise to those who administer it in purity, and who reverence its high behests.

J. A. Van Dyke, in conspiracy case, Detroit, Mich., Sept. 1851.

Our lives would not be worth the living unless the law was maintained and enforced. That all our liberties and blessings arise out of the protection offered by the law —to this the defense most heartily subscribes. We all live under the law; we must all yield obedience to the law; we all are entitled to the protection of the law.

You, gentlemen of the jury, sitting in this box as jurors, are just as much under the law as when at your homes carrying on the usual pursuits of life; and as jurors you must yield obedience to the law, and the accused is just as much entitled to the protection of the law as any citizen of the State. Your oath, gentlemen of the jury, is to try the case according to the law and the evidence.

Charles W. Smith, for defense in People v. Hinshaw, Danville, Ind., Sept. 14, 1895.

All men are equally entitled to the protection of the laws, but all men are not equally entitled to an extraordinary interposition and protection beyond the common distributive forms of justice.

Lord Erskine, Trial of Captain Ballie, Court of King's Bench, Nov. 24, 1778.

THE REASONING OF LAW.

In a system like that of law, which reasons logically, no one erroneous principle can be introduced without

producing every other that can be deducible from it. If in the premises of any argument you admit one erroneous proposition, nothing but bad reasoning can save the conclusions from falsehood.

John P. Curran, Trial of Peter Finnerty, publisher of the "Press," Dec. 22, 1797.

THE SANCTION OF THE LAW.

The sanction of all law is that it is the expression by popular election of the will of a majority of our people. Law has no other sanction than that with us; and happy are we, and happy are those communities where the election methods are so honestly and faithfully prescribed and observed that no doubt is thrown upon the popular expression and no question of the integrity of the ballot is ever raised.

Edmund Burke.

THE SPIRIT OF DISLOYALTY TO LAW.

Ah! gentlemen, there is a worse evil abroad through this land, than the over-shadowing power of corporations. There are *isms* of dreadful and fearful import around us. They "menace our public institutions and private rights." There is a spirit of disloyalty to law and country; a tendency to forsake the old landmarks; to treat the lessons of sages which come down from our fathers, as antiquated and worn out; to speak lightly of our hallowed Union; to abandon those pure, steadfast and perpetual principles which have sanctified our past, and which can alone save our future; and to rear and plant in *their* stead a "*higher law*," which each one for himself may adjudge and administer.

J. A. Van Dyke, in conspiracy case, Detroit, Mich., Sept. 1851.

THE STUDY OF THE LAW.

This study renders men acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources. In other countries the people, more simple and of a more mercurial cast, judge of an ill principle in government only by an actual grievance. Here they anticipate the evil and judge of the pressure of the grievance by the badness of the principle. They auger misgovernment at a distance and snuff the approach of tyranny in every tainted breeze.

Edmund Burke, Speech on moving resolutions for conciliation with America.

WHAT THE LAW PUNISHES.

A man might begin a crime and stop short, and be far from committing the act. He might go on one step further, without incurring guilt. It is only the completion of the crime that the law punishes.

Edmund Randolph, in defense of Aaron Burr, Circuit Court of U. S., Richmond, Va., May, 1807.

AFFIRMATIVE LAWS AND REPEALS.

Buckle, the most philosophic of all historians, either ancient or modern, told us that the state and the lawmaker seldom, if ever, render a benefit to mankind by the enactment of affirmative laws; that it is rather by the repealing of obnoxious, vicious enactments that they entitle themselves to the gratitude of humanity.

C. S. Blackburn, Speech in Congress, April 3, 1879, *in reply to Mr. Garfield.*

LAWS AND THEIR APPLICATION.

Ad ea quae frequentius accidunt jura adaptantur.

The laws are adapted to those cases which most frequently occur.

HUMAN LAWS AND INSTINCT.

When human laws do not protect us against injury, we appeal to our instincts; we are thrown upon the law of our instincts, and have a right to defend ourselves against those wrongs. This position will be perceived, upon examination, to be well founded. There is no law in this district which says you have a right to defend yourself against attack, except the law of nature. It would be folly to pass a statute to declare that a man may defend himself against the assault of a highwayman, or if a statute were passed on a subject like that, it would be folly to say that, before the statute was passed, you had not the right of self-defense. Self-preservation is nature's great law, and it overrides all other laws. Two men are floating on a plank, and it is necessary that one should be drowned in order that the other may be saved. It is not murder in the person who, to save his own life, drowns the other, when two persons are so situated, because the law considers that all social regulations must yield to those great principles which are implanted in us, and are a part of us as we came from the hands of the Creator.

John Graham, in Sickles' trial, Washington, Feb'y, 1859.

It will be conceded, that all crime, punishable by human authority, consists in the violation of some rule of conduct declared and published by some competent source. The principle is fundamental. It underlies the administration of criminal justice by all tribunals, whether military or civil. To constitute offense there must be law existing and law violated; and the law which

declares it, must be proclaimed and public. If it exist in the form of positive enactment, it must be punished. If it be customary law, it must be general, uniform, acknowledged. The citizen cannot be entrapped into crime. He must be notified of the demands of society in all the departments of its action, whether of peace or war, before obedience can be exacted, and disobedience punished. In a government of laws those acts only are criminal which the law condemns; and publicity is one of its material requisites. The idea of secret statutes, withheld from the subject whose conduct they are to regulate, is hostile to every principle of just government, and excites the sternest indignation. Hence the ponderous statutes of our national and State legislatures, declaring and defining crime, publicly enacted and widely promulgated. Hence the principle of antiquity involving immemorial recognition, upon which the common law rests. Hence, also, it is, that all are chargeable with knowledge of the law. Ignorance of its mandate will not excuse the offender. It is the duty of the subject to know it, and knowing, to obey it. The existence of the implication and duty, demands the correlative obligation of government, to publish its requirements. Men cannot be required to know that which is unrevealed, or to obey that which is unannounced. They cannot be punished but for sinning with knowledge, or with the means of knowledge. History has immortalized the shame of the ancient lawgiver, whose edicts were only published upon the city walls, high above the observation of the people. And if ever an American citizen shall be condemned under an unknown law, history will be true to her trust, and perpetuate the memory and condemnation of the prodigious wrong.

William A. Beach, in the case of North et al., at Washington, D. C., Feb'y, 1865.

NEW LAWS.

Among an ancient people a man who proposed a new law did so with a rope around his neck—signifying his willingness to be hung if it worked badly. If that rule prevailed with us, the multitude of public executions would enforce as no other experience could, that wise maxim.

Chauncey M. Depew, Address before Columbia College Law School, May 17, 1882.

OBJECTIONS TO THE CONSTITUTIONALITY OF LAWS.

It is, nevertheless, too much the fashion with some politicians when hard pressed on the expediency of a measure, to entrench themselves behind objections to its constitutionality—aware that there is naturally in the public mind a jealous sensibility to objections of that nature, which may predispose against a thing otherwise acceptable, if even a doubt in this respect can be raised.

Alexander Hamilton (Letter in defense of Jay's Treaty, 1796,—signed Camillus).

THE OBJECT OF LAWS.

In civilized communities property as well as personal rights is an essential object of the laws, which encourage industry by securing the enjoyment of its fruits.

James Madison (Notes on Suffrage, 1829).

THE TYRANNY OF LAWS.

"Nephew," said Algernon Sidney, in prison the night before his execution, "I value not my own life a chip; but what concerns me is, that the law which takes away my life may hang everyone of *you* whenever it is thought convenient." Though thus comprehensive in its provisions and applicable to all, there is no safeguard of hu-

man freedom which the monster act does not set at naught.

Charles Sumner, Speech in the U. S. Senate, Aug. 26, 1852, on his motion to repeal the Fugitive Slave Bill.

THE VALIDITY AND BINDING FORCE OF LAWS.

The foundation of the English constitution rests upon this principle: that no laws have any validity and binding force without the consent and approbation of the people, given in the persons of their representatives, periodically elected by themselves. This constitutes the Democratical part of the Government.

Alexander Hamilton (Article in reply to "the farmer," and review of the disputes between Great Britain and the Colonies, Feb'y 5, 1755).

UNJUST LAWS.

There was a deep philosophy in the confession of an eminent English judge. When he had condemned a young woman to death under the late sanguinary code of his country for her first petty theft, she fell down dead at his feet. "I seem to myself," said he, "to have been pronouncing sentence not against the prisoner, but against the law itself."

William H. Seward, Speech in the U. S. Senate, March 11, 1850.

THE REQUISITES OF A LAWYER.

Integrity of character and fidelity to opinions and duty are the first requisites of a good lawyer. The property of a client which comes into his possession can neither be borrowed nor loaned. It is a sacred trust, to be instantly and scrupulously accounted for.

Chauncey M. Depew, before the Columbia Law School, May 17, 1882.

LAWYERS IN HISTORY.

They have codified the laws, brushed away the subtleties of practice, abolished those fictions of law and equity which defeated justice, and secured to women the administration and disposition of their property; and yet liberties are always so enlarged as to preserve essential rights.

Chauncey M. Depew, before the Columbia Law School, May 17, 1882.

THE FIDUCIARY RECORD OF LAWYERS.

Though holding larger trusts than all other vocations combined, and without security, the record of the profession in its fiduciary relations is of unexampled purity.

Chauncey M. Depew, before the Columbia Law School, May 17, 1882.

LEGAL FICTIONS AND EQUITY.

Infictione juris semper aequitas existit.

A legal fiction is always consistent with equity.

LEGAL TENDER AND THE CURRENCY.

South Carolina led the van in 1703. New York and Connecticut followed, and made their notes a legal tender in 1709. Rhode Island fell into their wake in 1720; Pennsylvania in 1722; Maryland in 1733; Delaware in 1739; North Carolina in 1748; Virginia in 1755; Georgia in 1760. In two of the States, tobacco and beaver skins were made a legal tender, and your Honors doubtless still retain your schoolboy memories of the celebrated Parson's Case, in which Wirt so charmingly interwove the story of the wrongs of the clergy, with the eloquence of Patrick Henry, in support of the act of the House of Burgesses of Virginia, authorizing the payment in gold and silver of the stipend which, in right of the church,

they claimed to be payable only in the narcotic commended by Sir Walter Raleigh even on his way to the scaffold.

In 1751, the imperial parliament, by the act of 24 George, ch. 53, sec. 2, in the exercise of its unlimited and undoubted power, interdicted the further emission by the Colonies of bills of credit as a legal tender. That country was less benign to our fathers than to its later Colonies; for from 1833 to the present hour, the notes of the Bank of England have been, by act of parliament, a legal tender for private debts in every part of the British empire.

. . .

The substantial issue is on the right to make the notes of the United States a legal tender. A minor issue is raised as to the power of Congress to declare them to be *money*. That is a question of very trivial moment, as without such a declaration they *are* money by the common recognition of all civilized communities. If Congress had failed to make the declaration, the omission would be quite immaterial, as the Supreme Court of the United States had held treasury notes to be money, even before they were made legal tender.

John K. Porter, in case of Metropolitan Bank v. Van Dyke, Albany, N. Y., June 27, 1863.

LEGISLATION—DIVINE AND HUMAN.

Do you mean to tell me that, when the great Being above said, "thou shalt not steal," it was not as high a crime to steal before, as it is after human legislation has said, "thou shalt not steal?" When the great Being above said, "thou shalt not kill," and "thou shalt not bear false witness against thy neighbor," those crimes were perfect. He himself pronounced those ordinances.

Human laws may enforce them with additional sanctions, but do not impart to them additional solemnity.

John Graham, in Sickles' trial, Washington, Feb'y, 1859.

THE RESULTS OF CRIMINAL LIBEL.

The criminality of a mere personal libel consists in this, that it tends to a breach of the peace; it tends to all the vindictive paroxysms of exasperated vanity, or to the deeper or more deadly vengeance of irritated pride. The truth is, few men see at once that they cannot be hurt so much as they think by the mere battery of a newspaper.

John P. Curran, Trial of Peter Finnerty, publisher of the "Press," Dec., 1797.

LIBELS AND LIBELING.

Libeling is not the crime of an illiterate people. When they were thought no mean clerks, who could read and write; when he, who could read and write, was presumptively a person in holy orders, libels could not be general or dangerous; and scandals merely oral could spread little, and must perish soon. It is writing, it is printing, more emphatically, that imps calumny with those eagle wings, on which, as the poet says, "immortal slanders fly." By the press they spread, they last, they leave the sting in the wound. Printing was not known in England much earlier than the reign of Henry VII., and in the third year of that reign the court of the Star Chamber was established. The press and its enemy are nearly coeval. As no positive law against libels existed, they fell under the indefinite class of misdemeanors. For the trial of misdemeanors that court was instituted; their tendency to produce riots and disorders was a main part of the charge, and was laid, in order to give the court jurisdiction chiefly against libels. The offence was new.

Learning of their own upon the subject they had none; and they were obliged to resort to the only emporium, where it was to be had, the Roman law. . . .

We have in a libel, 1st. The writing. 2nd. The communication, called by the lawyers the publication. 3rd. The application to persons and facts. 4th. The intent and tendency. 5th. The matter—diminution of fame. The law-presumptions on all these are in the communication. No intent can make defamatory publication good, nothing can make it have a good tendency; truth is not pleadable.

Edmund Burke, Speech on the Duties of Juries in libel cases, in House of Commons, March, 1771.

LIBERTY.

At the sea shore you pick up a pebble, fashioned after a law of nature, in the exact form that best resists pressure, and worn smooth as glass. It is so perfect that you take it as a keepsake. But could you know its history from the time when a rough fragment of rock fell from the overhanging cliff into the sea, to be taken possession of by the under currents, and dragged from one ocean to another, perhaps around the world, for a hundred years, until in reduced and perfect form it was cast upon the beach as you find it, you would have a fit illustration of what many principles, now in familiar use, have endured, thus tried, tortured and fashioned during the ages. We stand by the river and admire the great body of water flowing so sweetly on; could you trace it back to its source, you might find a mere rivulet, but meandering on, joined by other streams and by secret springs, and fed by the rains and dews of heaven, it gathers volume and force, makes its way through the gorges of the mountains, plows, widens and deepens its channel through

the provinces, and attains its present majesty. Thus it is that our truest systems of science had small beginnings, gradual and countless contributions, and finally took their place in use, as each of you, from helpless childhood and feeble boyhood, have grown to your present strength and maturity. No such system could be born in a day. It was not as when nature in fitful pulsations of her strength suddenly lifted the land into mountain ranges, but rather, as with small accretions, gathered in during countless years, she builds her islands in the seas.

Joseph Neilson, Address at Saratoga, Aug. 1, 1875.

Men cannot communicate their free thoughts to one another with a lash held over their heads. It is the nature of everything that is great and useful, both in the animate and inanimate world, to be wild and irregular—and we must be contented to take them with the allies which belong to them, or live without them. Genius breaks from the fetters of criticism, but its wanderings are sanctioned by its majesty and wisdom, when it advances in its path; subject it to the critic, and you tame it into dulness. Mighty rivers break down their banks in the winter, sweeping away to death the flocks which are fattened on the soil that they fertilize in the summer; the few may be saved by embankment from drowning, but the flock must perish from hunger. Tempests occasionally shake our dwellings and dissipate our commerce; but they scourge before them the lazy elements, which without them would stagnate into pestilence. In like manner, Liberty herself, the last and best gift of God to His creatures, must be taken just as she is; you might bear her down into bashful irregularity, and shape her

into a perfect model of severe scrupulous law, but she would then be Liberty no longer; and you must be content to die under the lash of this inexorable justice which you have exchanged for the banners of Freedom.

Lord Erskine, in defence of John Stockdale, tried for libel, in the Court of King's Bench, Dec. 9, 1789.

BRITISH LIBERTY.

I speak in the spirit of the British law, which makes liberty commensurate with, and inseparable from British soil; which proclaims even to the stranger and sojourner, the moment he sets foot upon British earth, that the ground on which he treads is holy, and consecrated by the genius of Universal Emancipation. No matter in what language his doom may have been pronounced; no matter what complexion incompatible with freedom, an Indian or an African sun may have burnt upon him.

John P. Curran, Trial of A. H. Rowan, Jan'y 29, 1794.

LIFE AND DEATH.

Leave the door of clemency open; do not shut it by wholesale conviction. Remember that life is an awful and sacred thing; remember that death is terrible—terrible at any time and in any form. But when to the frightful mien of the grim monster, when to the chilled visage of the spirit of the glass and scythe, is added the hated, dreaded spectre of the gibbet, we turn shuddering from the accumulated horror.

Daniel W. Voorhees, Trial of John E. Cook, Charlestown, Va., Nov. 8, 1859.

LIMITATIONS AND STATUTES.

Nullum tempus occurrit regi.

Lapse of time does not bar the right of the crown.

THE FOUNDATION OF LOYALTY.

Engage the people by their affections, convince their reason, and they will be loyal from the only principle that can make loyalty sincere, vigorous, and rational—a conviction that it is their truest interest, and that their government is for their good.

Lord Erskine, in defense of Thomas Paine.

MAGISTRATES.

Public example requires that a magistrate should stand or fall by his heart; that is the only part of a magistrate vulnerable in law in every civilized country in the world.

Lord Erskine, in defense of George Stratton and others, in the Court of King's Bench, Feb'y 5, 1780.

THE MAN AND HIS HOME.

It is a well settled legal principle, that every man's house is his castle—for the security of himself and his family. The word "castle" is a term of the law. It does not signify that a man keeps his family within battlemented walls—but it is used as a figure of speech to denote that his residence, though it be a hut which can neither keep the rain nor sunshine from penetrating its roof, is nevertheless, for every moral and legal purpose, as much a fortress as if it were constructed for one.

John Graham, in Sickles' trial, Washington, Feb'y, 1859.

A VALID MARRIAGE.

Consensus, non concubitus, facit matrimonium.

It is the consent of the parties, not their concubinage, which constitutes a valid marriage.

THE EVIDENCE OF MARRIAGE.

"Evidence of marriage;" may it please your honor, what is evidence of marriage? Why, living together, may

it please your honor; cohabiting together, may it please your honor; introducing each other as man and wife; walking in the sacred relations as such; rearing up children together, may it please your honor; that going down into the valley and shadow of death that a wife assumes in such relations; and for all these they were married; they were married when he enjoyed the bloom of her youth and loving tenderness; married when he drank deep of her heart's young affections; married when it flattered his fancy to control her beauty; but when we come to that after-stage of life, where the fire and fervor fade from the eye, and age comes stealing over the features and dims their brightness, when, of all times marriage is to life most sacred, when they should be leading each other hand in hand down the western slope of life's steep hill, to rest together at its foot in a long repose; just as they entered on that sacred journey, then it is that this monster of humanity seeks to cast her off, and bastardize her children! Not married! Not married! Who, then, is married?

William A. Beach, in the Brinkley case, New York, June, 1873.

MEANING OF "MALICIOUSLY."

What does "maliciously" mean? To constitute the crime, the killing must not only be done purposely, but also maliciously. It is a word frequently used by us all. It means simply, in this connection, intense hatred in the heart of the murderer towards his victim. It is evidenced, says a law writer, by a depraved or malignant spirit. It is exhibited, when a wrong doer acts wholly regardless of social duty. It is evidenced by a rooted design to do mischief. It means, in common parlance—revenge. In legal contemplation its presence is always presumed in the

perpetration of an unlawful act. If you should step upon the street and wantonly take the life of a passer-by, the presumption would be that it was done maliciously.

General Thomas M. Brown, in Foster-Hatfield trial, Indianapolis, Jan'y, 1872.

MERCY.

Sitting there a representative of 60,000,000 of people, I ask you to be merciful. It never yet soiled the ermine. Your honor can afford to be merciful. I heard Judge Armfield say once that he had never imposed the maximum punishment on any one, for fear a greater offender might come before him, and he would have no punishment to mete out proportionate to the offence. The more merciful we are the nearer we draw to Him, the Father of us all, the all-merciful.

J. R. Holland, in his own behalf, Charlotte, N. C., May 14, 1895.

FROM THE MIDDLE WALKS OF LIFE.

Born of a parent stock occupying the middle walks of life, and possessed of all those tender and domestic virtues which escape the contamination of those vices that dwell on the frozen peaks, or in the dark and deep caverns of society, he would not have been here had precept and example been remembered in the prodigal wanderings of his short and checkered life. Poor deluded boy! wayward, misled child! An evil star presided over thy natal hour and smote it with gloom.

Daniel W. Voorhees, plea for John E. Cook, at Charleston, Va., Nov. 8, 1859.

MILITARY POWER.

He then avowed it to be his settled and deliberate opinion that the military might "*take and kill, try and execute*" (I use his own words) persons who had no sort

of connection with the army or navy. And though this be done in the face of the open courts, the judicial authorities, according to him, are utterly powerless to prevent the slaughter which may thus be carried on. That is the thesis which the attorney-general and his assistant counsellors are to maintain this day, if they can maintain it, with all the power of their artful eloquence.

Judge Black, on Right of Trial by Jury.

THE HUMAN MIND.

What is the human mind? It is immaterial, spiritual, immortal; an emanation of the divine intelligence, and if the frame in which it dwells had preserved its just and natural proportions, and perfect adaptation, it would be a pure and heavenly existence. But that frame is marred and disordered in its best estate. The spirit has communication with the world without, and acquires imperfect knowledge only through the half-opened gates of the senses. If, from original defects, or from accidental causes, the structure be such as to cramp or restrain the mind, it becomes or appears to be weak, diseased, vicious and wicked.

William H. Seward, in case of People v. Freeman.

MODESTY.

When Washington came back from the French and English wars, and took his seat in the House of Burgesses, he was met by a vote of thanks, and as he rose to respond, his emotion overcame him, and he couldn't speak. The Speaker of the House, Mr. Robinson, came promptly to his rescue, and said: "Sit down, Mr. Washington, sit down. Your modesty is equaled only by your valor, and that surpasses the power of any language I possess."

Frederick W. Lehman, for plaintiff, in Pulitzer v. Jones, St. Louis, Jan'y 10, 1896.

MONEY.

One of the first powers given to Congress, therefore, is that of coining money and fixing the value of foreign coins; and one of the first restraints imposed on the States is the total prohibition to coin money. These two provisions are industriously followed up and completed by denying to the States all power to emit bills of credit, or to make anything but gold and silver a tender in the payment of debts. The whole control, therefore, over the standard of value and medium of payments is vested in the general government.

Daniel Webster, in Ogden v. Saunders.

THE INFLUENCE OF MONEY.

We have heard much of this noble Lord's wealth, and much of his exploits, but not much of his accomplishments or his wit. I know not that his verses have soared even to the poet's corner. I have heard it said that an ass laden with gold could find his way through the gate of the strongest city. But, gentlemen, lighten the load upon his back, and you will completely curtail the mischievous faculty of a grave animal, whose momentum lies not in his agility, but his weight; not in the quantity of motion, but the quality of his matter.

John P. Curran, in case of Massy v. Headfort.

THE PAYMENT OF MONEY.

Quicquid solvitur, solvitur secundum modum solventis —quicquid recipitur, recipitur secundum modum recipientis.

Money paid is to be applied according to the intention of the party paying it; and money received, according to that of the recipient.

MOTIVE.

When actions may have one meaning or another, according to various interpretations and the point of view from which they are approached, the discovery of the true motive that prompts them is never easy. Whether Cæsar really wanted the kingly crown will, perhaps, never be known. Volumes may yet be written in the effort to hold out the motives of Cromwell or to determine just how far our own Washington was prompted by selfish and how far by patriotic impulses. The humblest individual has also his peculiar mental organization, his hopes, his weaker judgment, a thousand surrounding circumstances impossible to foresee and beyond control, that constantly lead him in one direction or impel him to take another.

Before we can advance one step toward a just judgment as to what was in the mind of any man at any given time we must at least get a measurably correct notion of his situation and surroundings at the time to which our inquiry relates.

John B. Elam, for defense in People v. Coffin, Indianapolis, Oct. 21, 1895.

Motive is hidden in the deeper recesses of the heart from which it cannot be extracted by any human evidence. Often God is the only being who can correctly discern motive. In this case, gentlemen of the jury, the State, doing the best it could, has tried to ascribe a motive to the defendant. . . . Remember, gentlemen of the jury, that motive for any crime is often a very hard matter to discover. Motive usually lies hidden in the breast of the criminal, and we can only guess at

it from surrounding circumstances. Sometimes, it is true, circumstances point clearly to the motive, but more often they do not.

Henry N. Spaan, in People v. Hinshaw, Danville, Ind., Oct. 1, 1895.

MOTIVE AND ACTION.

Motive always precedes action. Was there any motive for it? If we establish the existence of the seed, we shall feel less hesitation in being convinced of the production of the plant.

S. S. Prentiss, in E. C. Wilkinson case.

MURDER.

Gentlemen of the Jury:—"Thou shalt not kill," and "Whoso sheddeth man's blood by man shall his blood be shed," are laws found in the code of that people who, although dispersed and distracted, trace their history to the creation; a history which records that murder was the first of human crimes.

William H. Seward, in case of People v. Freeman.

"Murder," says Blackstone, "is now thus defined, or rather described, by Sir Edward Coke: 'When a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought, either express or implied.'" The same author defines manslaughter to be "the unlawful killing of another without malice, either express or implied; which may be either voluntary, upon a sudden heat, or involuntary, but in the commission of some unlawful act."

Edwin M. Stanton, in Sickles' trial.

MURDER AND INSANITY.

Murder was not only murder then, but insanity was a crime, not a disease. It was an evil spirit. In that day theologians gave us the definition, and we believed it; then the world became a little wiser, and metaphysicians took it up. They called it *a lack of intellect.* But now we know that it is a *disease.*

Henry M. Cheever, in Underwood trial, Detroit, May, 1874.

THE MURDERER.

Gentlemen, the murderer is a most detestable character. Far be it from me to defend him before this or any other jury. Society cannot, it ought not, to contain him. Calm, cold, and calculating, he saves his malice as the miser saves his treasure. His bosom is the vault in which he deposits it. Age possesses no claim upon his consideration—nor does sex interfere with him in the execution of his bloody purpose. In the very air he sees his weapon, and it marshals him "the way that he was going." He selects some object of innocence for his victim, and chooses some lonely spot for the perpetration of his horrid deed. In the drapery of the Night he wraps himself—and at that hour when

> "O'er the one half world
> Nature seems dead, and wicked dreams abuse
> The curtain'd sleeper,"

he steals forth to the accomplishment of his bloody design. Afraid of his own movements, he is compelled to address the very Earth itself in the language of supplication—to entreat it to

> "Hear not his steps, which way they walk, for fear
> The very stones prate of his whereabout."

John Graham, in Sickles' trial.

THE AMERICAN NATION.

America was a sovereign nation when her sons stepped forth to resist the unjust hand of oppression and declared themselves independent. The consent of Great Britain was not necessary (as the gentlemen on the other side urge) to create us a nation. Yes, sir, we were a nation long before the monarch of that little island in the Atlantic ocean gave his puny assent to it. America was long before that time a great and gallant nation.

Patrick Henry, in Jones v. Walker, Richmond, Va., Nov., 1791.

THE FIRST UTTERANCE OF THE NATION.

The preamble of the Constitution is the *first utterance* of the nation as an organized government. It is the proclamation of their will, their purpose and their act, by the whole American people. In every exigency of national existence, it continues to announce to the government and to the world the sovereign objects the people sought to attain, and the sovereign powers they assumed in the Constitution to confer.

John K. Porter, in case of Metropolitan Bank v. Van Dyke, Albany, N. Y., June 27, 1863.

THE LAW OF NATIONS.

Certain maxims and customs consecrated by long use, and observed by nations between each other as a kind of law, form this customary law of nations, or the custom of nations. This law is founded on a tacit consent, or, if you will, on a tacit convention of the nations that observe it, with respect to each other. Whence it appears that it is only binding to those nations that have adopted it, and that is not universal, any more than conventional laws. It must be here also observed of this customary law, that the particulars relating to it do not belong to a systematic treatise on the law of nations, but that we

ought to confine ourselves to the giving a general theory of it, that is, to the rules which here ought to be observed as well with respect to its effects as in relation to the matter itself; and in this last respect these rules will serve to distinguish the lawful and innocent customs from those that are unjust and illegal.

Patrick Henry, in case of Jones v. Walker, Richmond, Va., Nov., 1791.

NECESSITY.

The actual situation of America is described here, where this author says, "that right goes hand in hand with necessity." The necessity being great and dreadful, you are warranted to lay hold of every atom of money within your reach, especially if it be the money of your enemies. It is prudent and necessary to strengthen yourselves and weaken your enemies. Vattel, book 3d, ch. 8, sec. 138, says: "The business of a just war being to suppress violence and injustice, it gives a right to compel, by force, him who is deaf to the voice of justice. It gives a right of doing against the enemy whatever is necessary for weakening him, for disabling him from making any further resistance in support of his injustice; and the most effectual, the most proper methods may be chosen, provided they have nothing odious, be not unlawful in themselves, or exploded by the law of nature." Here let me pause for a moment, and ask whether it be odious in itself, or exploded by the law of nature, to seize those debts?

Patrick Henry, in case of Jones v. Walker.

NECESSITY AND PRIVATE RIGHTS.

Necessitas inducit privilegium quoad jura privata.

With respect to private rights, necessity privileges a person acting under its influence.

NEGATIVE PROOF.

This is not proof at all; it is a character which is always scouted from the appearance of positive, affirmative evidence. What one man did not see is often seen by many others. Instances of this rule are very familiar in all the books.

Daniel W. Voorhees, in defense of H. C. Black.

NEGLIGENCE AS TO PROPERTY.

If husbands, acting under the generous feelings that are encouraged in these countries, are deceived, and if foul advantages are taken of them, it is hard to consider any compensation too great for the injury they sustain; but if the husband not only neglects, but almost invites addresses to his wife, he shall not be compensated. What is the law in other cases? Is not the neglect or want of vigilance of one's property considered by the law as not entitled to redress? Is not an estate often lost because the claim has not been made in a reasonable time?

Hon. George Ponsonby, in the case of Massy v. Headfort, County Clare, Ire., July 27, 1804.

NEWSPAPERS.

We are a nation certainly distinguished for three things: for newspapers, politics, and tobacco. I do not know that the Americans could present their social individualities by any better signs. Everybody reads the papers, and everybody has a paper given him to read. The hackman waiting for his fare consumes his leisure perusing the paper. The apple-woman at her stall, reads the paper. At the breakfast table, the dinner table, and the supper table, the paper is daily read.

James T. Brady, in case of Savannah Privateers.

NOTORIETY AND REPUTATION.

It may as well be said, that the notoriety of a man having committed a crime is evidence of his guilt. Noto-

riety is at best another name for reputation, which cannot even by law be given in evidence in any criminal case, and which, *a fortiori,* could not sustain a verdict of conviction.

John P. Curran, Trial of Owen Kirwan for high treason, London, Sept. 1, 1803.

NURSING.

Do you know what it is to be a nurse? Do you know what it is to spend night after night in the care of the sick? Do you know what it is to have the eye-lids become so heavy they feel like lead—exhaustion so great that one feels like dropping in his tracks—anxiety—loss of sleep, the wear and tear of the nerves? Do you know what it is to do the unpleasant offices of a sick-room? The sick-room is not simply a place of flowers; not simply for the exchange of poetical conversation. It is a place for hard offices. Mrs. Robert Morrisson did all that.

Benjamin Harrison, in Morrisson will case, Indianapolis, 1895.

OBEDIENCE.

It is no part of a sailor's duty to moralize and to speculate, in such a moment as this was, upon the orders of his superior officers. The commander of a ship, like the commander of an army, "gives desperate commands." He requires instantaneous obedience. The sailor, like the soldier, obeys by instinct. In the memorable, immortal words of Carnot, when he surrendered Antwerp, in obedience to a command which his pride, his patriotism, and his views of policy all combined to oppose: "The armed force is essentially obedient; it acts, but never deliberates." The greatest man of the French Revolution did here but define, with the precision of the algebraist, what he conceived with the comprehension of a states-

man; and his answer was justification with every soldier in Europe!

David Paul Brown, in the Holmes case.

OBLIVION.

The oblivion of the buried is as profound as the oblivion of the dead.

John P. Curran, in Hevey v. Sirr, May 17, 1802.

OFFICE HOLDERS.

All history proves that public officers of any government, when they are engaged in a severe struggle to retain their places, become bitter and ferocious, and hate those who oppose them even in the most legitimate way, with a rancor which they never exhibit toward actual crime. This kind of malignity vents itself in persecutions for political offenses, sedition, conspiracy, libel, and treason, and the charges, spies and common delators, who make merchandise of their oaths and trade in the blood of their fellow-men. During the civil commotions in England, which lasted from the beginning of the reign of Charles I., to the revolution of 1688, the best men and the purest patriots that ever lived fell by the hand of the public executioner. Judges were made the instruments for inflicting the most merciless sentences on men, the latchets of whose shoes the ministers that prosecuted them were not worthy to stoop down and unloose.

Judge Jeremiah S. Black, on Trial by Jury.

AN EXECUTIVE OFFICER.

But a public executive officer has one plain duty: it is to enforce the law with kindness and forbearance, but with promptness and inexorable decision. He may not choose what laws he will enforce any more than the citizen may choose what laws he will obey. We have here but one king: it is the law, passed by those consti-

tutional methods which are necessary to make it binding upon the people, and to that king all men must bow. It is my great pleasure to find so generally everywhere a disposition to obey the law. I have but one message for the North and for the South, for the East and the West, as I journey through this land. It is to hold up the law, and to say everywhere that every man owes allegiance to it, and that all law-breakers must be left to the deliberate and safe judgment of an established tribunal.

Benjamin Harrison, Speech at Salem, Oregon.

PUBLIC OFFICIALS.

The lot of a public official is not a pleasant one. It has its disagreeable offices to perform. It has its recompense. To a man charged with the administration of justice, the only recompense is the knowledge that he has at all times faithfully discharged his duty. The terrible consequences of crime falling upon the heads of those who are in no way responsible for their commission is not satisfactory to a public official. Often the judge upon the bench pronounces the sentence of the law with feelings of sorrow and regret. Often jurors, loyal to their obligations, hand up a verdict, the paper that determines the question of guilt or innocence, with a trembling hand and a sorrowful heart.

U. S. District Attorney Frank B. Burke, for prosecution, in People v. Haughey, Indianapolis.

THE FREEDOM OF OPINION.

But I maintain that *opinion* is free, and that conduct alone is amenable to the law.

Lord Erskine, in defense of Thomas Paine.

THE FORCE OF OPINION.

The ordinary jurisdiction of the court bears a strong resemblance to the narrow cognizance at common law;

but its extraordinary jurisdiction over "all claims which may be referred to it by either house of Congress," extends its power to the utmost limits attainable by juridical science in its fullest development. In this aspect, its dignity and importance as a governmental institution cannot be too highly appreciated. As a means by which rightful claims against the government may be readily established, and those not founded in justice promptly driven from the portals of Congress, it must exercise a most healthful influence. But we are authorized to look higher than the mere convenience of suitors and the dispatch of public business. Enlightened patriotism will contemplate other and more important consequences. Caprice can no longer control. Here equity, morality, honor and good conscience must be practically applied to the determination of claims, and the actual authority of these principles over governmental action ascertained, declared and illustrated in permanent and abiding forms. As step by step, in successive decisions, you shall have ascertained the duties of government toward the citizen, fixed their precise limits upon sound principles, and armed the claimant with means of securing their enforcement, a code will grow up, giving effect to many rights not heretofore practically acknowledged. In it will be found enshrined for the admiration of succeeding ages an honorable portraiture of our national morality, and a full vindication of the eulogium recently pronounced upon our people by the highest authority in the parent State. "Jurisprudence," says Lord Campbell, in the Queen v. Millis, "is the department of human knowledge to which our brethren in the United States of America have chiefly devoted themselves, and in which they have chiefly excelled."

Charles O'Conor, in Armstrong case, Washington, D. C., Nov. 27, 1855.

OPPRESSION.

If it be true, as the wisest of inspired writers hath said, "Verily oppression maketh a wise man mad," what may we not expect it to do with a foolish, ignorant, illiterate man! Thus it is explained why, when he came out of prison, he was so dull, stupid, morose; excited to anger by petty troubles, small in our view, but mountains in his way; filled in his waking hours with moody recollections, and rising at midnight to sing incoherent songs, dance without music, read unintelligible jargon, and combat with imaginary enemies.

William H. Seward, in case of People v. Freeman.

What do you think an eminent man said, in the British Parliament, about the outbreak of our revolution, and the condition of things then existing in America? "Whenever oppression begins, resistance becomes lawful and right." Who said that? The great associate of Chatham and Burke, Lord Camden. At that time Franklin was in Europe, seeking to obtain a hearing before a committee of parliament in respect to the grievances of the American people. It was refused.

James T. Brady, in case of Savannah Privateers.

PARENT AND CHILD.

The next greatest tie is that of parent and child. If in God's providence a man has not only watched over the cradle of his child, but over the grave of his offspring, and has witnessed earth committed to earth, ashes to ashes, and dust to dust, he knows that the love of a parent for his child is stronger than death. The bitter lamentation—"Would to God I had died for thee"—has been wrung from many a parent's heart. But when

the adulterer's shadow comes between the parent and child, it casts over both a gloom darker than the grave. What agony is equal to his who knows not whether the children gathered around his board are his own offspring or an adulterous brood, hatched in his bed. To the child it is still more disastrous. Nature designs that children shall have the care of both parents; the mother's care is the chief blessing to her child—a mother's honor its priceless inheritance. But when the adulterer enters a family, the child is deprived of the care of one parent, perhaps of both. When death, in God's providence, strikes a mother from the family, the deepest grief that preys upon a husband's heart is the loss of her nurture and example to his orphan child; and the sweetest conversation between parent and child is when they talk of the beloved mother who is gone. But how can a father name a lost mother to his child, and how can a daughter hear that mother's name without a blush? Death is merciful to the pitiless cruelty of him whose lust has stained the fair brow of innocent childhood by corrupting the heart of the mother, whose example must stain the daughter's life.

Edwin M. Stanton, in Sickles' trial.

PASSION AND INSANITY.

Passion, however strong, terrible or emotional, is not insanity. It would destroy government almost to allow anger to excuse from criminal responsibility. Anger has more frequently dyed its hand in human gore than hatred or revenge. It has nerved the arm and directed the blow in many of the most heartless and brutal murders that have ever disgraced the world.

Thomas M. Brown, in Foster-Hatfield trial, Indianapolis, Jan'y, 1872.

PARLIAMENT AND THE PEOPLE

It is the duty of Parliament to listen to the voice of the people; for they are the servants of the people.

Lord Erskine, in defense of Lord George Gordon.

PARTIES IN A TRANSACTION.

Res inter alios acta alteri nocere non debet.

A transaction between two parties ought not to operate to the disadvantage of a third.

THE NATIONAL PATENT LAW.

Why was it thought a matter of sufficient importance to confer this power upon the national government? The answer to this question will be found in the history of the country, in the nature of our institutions, and the great national objects which the Constitution had in view. The country was in its infancy; its population was small, its territory immense; it had recently thrown off its bondage by the war of the revolution, and was left exhausted and poor—poor in everything but virtue and the love of country. It was still dependent on the arts of Europe for all the comforts and almost all the necessaries of life. We had hardly any manufactures, science or literature of our own. Our statesmen saw the great destiny which was before the nation, but they saw also the necessity of exciting the energies of the people, of invoking the genius of invention, and of creating and diffusing the lights of science. These were the objects in which the whole nation was concerned, and were, therefore, naturally and properly confided to the national government. The States, indeed, might have exercised their inherent power of legislating on this subject; but their sphere of action was comparatively small; their regulations would naturally have been various and conflicting. Discouragement and discontent would have

arisen in some States from the superior privileges conferred on the works of genius in others; contests would have ensued among them on the point of the originality of invention; and laws of retortion and reprisal would have followed. All these difficulties would be avoided by giving the power to Congress, and giving it exclusively by the States. If it were wisely exerted by Congress, there could be no necessity for a concurrent exercise of the power by the States.

William Wirt, in Gibbon v. Ogden, Washington, D. C., Feb'y, 1854.

THE SECURITY OF PATENTS.

The constitutional power of Congress is to patent *useful* discoveries. The patent authorizes the patentee to *use* his invention, and it is the use which is secured. When a discovery is deemed *useful* by the national government, and a patent shall issue authorizing the patentee to use it throughout the United States, and the patentee shall be obstructed by a State in the exercise of this right, on the ground that the discovery is useless and dangerous, it will be time enough to consider the power of the States to defeat the exercise of the right on this ground.

William Wirt, in Gibbon v. Ogden.

THE SEVERITY OF PENAL LAWS.

Need I prove the impolicy of severe penal laws? They have ever been found more to exasperate than to restrain. When the infliction is beyond the crime, the horror of the guilt is lost in the horror of the punishment; the sufferer becomes an object of commiseration; and the injustice of the state, of public odium. It was well observed that, in England, the highwayman never murdered, because there the offender was not condemned to torture! But, in France, where the offender was

broken on the wheel, the traveler seldom or never escaped!

John P. Curran, Trial of Lady Fitzgerald—Irish Commons, Aug. 20, 1790.

THE DEMAND OF THE PEOPLE.

When Cicero impeached Verres before the great tribunal of Rome of singular cruelties and depredations in her provinces, the Roman people were not left to such inquiries. All Sicily surrounded the Forum, demanding justice upon her plunderer and spoiler, with tears and imprecations. It was not by the eloquence of the orator, but by the cries and tears of the miserable that Cicero prevailed in that illustrious cause. Verres fled from the oaths of his accusers, and their witnesses, and not from the voice of Tully. To preserve the fame of his eloquence, he composed his five celebrated speeches, but they were never delivered against the criminal, because he had fled from the city appalled with the sight of the persecuted and oppressed.

Lord Erskine, in defense of John Stockade, London, Dec. 9, 1789.

PERJURY.

You will do well to consider it was through a perjured witness that a Russell and a Sidney were convicted in the reign of James II. If juries are not circumspect to determine *only* by the evidence adduced before them, and not from any extraneous matter, nor from the slightest breath of prejudice, then what will become of our boasted trial by jury?

John P. Curran, Trial of Oliver Bond for high treason, London, July 24, 1798.

The law of the country has said that the man once convicted of false swearing shall not a second time con-

taminate the walls of a court of justice; and it is the very essence of a jury, that if a man appears (though not yet marked out by the law as a perjurer) to have soiled his nature by the deliberate commission of this crime, that moment his credit shall cease with the jury—his evidence shall be blotted from their minds, and leave no trace but horror and indignation.

John P. Curran, Trial of Dr. Dennan, June 25, 1794.

THE PERJURER.

I do not think I ever saw a perjurer, however bald and naked, who could not invent some pretext to palliate his crime, or who could not, for fifteen shillings, hire an Old Bailey lawyer to invent some for him.

Robert Toombs, Speech in U. S. Senate, on Secession, July, 1861.

PERPLEXITY.

"Perplexed in the extreme"—*"Perplexed in the extreme."* He came to know what I trust few hearts know—

> "What damned minutes tells he o'er,
> Who dotes yet doubts, suspects, yet strongly loves."

Rufus Choate, in Dalton divorce case.

PERSECUTION.

Indifferent to their virtues, they treasure up their vices and erect a standard to judge of character. So the scavenger, as he creeps, with bended back and earthward eye, along your city streets and shuns the pleasant spots, the shaded walks, visiting the loathsome alleys and gutters for the foul, rejected matter, reeking, noisome, disgusting—gathered from the half-filled ditch, treasuring only what is foul! In all my experience I have never seen a man so treated. There is a class of men to whom this human hunt is a pleasant pastime

—an exciting game. There is a kind of ferocity in human nature, a sort of blood-thirstiness, which creeps in men of weakness, who never attack the strong; but no sooner is a fellow mortal down, than they fall upon and tear him like vultures on a carrion—too cowardly to prey upon the living, they will descend into the grave, drag out the carcass from its moldering repose, and feed upon the festering remains. Let man be unfortunate, let him be down, and they hasten to this rich repast. But there are two kinds of men with which it is useless to make personal issues. The one whose character is too bad *to be made worse, the other so good that it cannot be injured!* No rank or position can screen a man from just censure due to wrong and injustice—right, even-handed justice to all, even the meanest. Equal rights—fair play, are the jewels dearest to the heart of every man.

John Van Arman, in conspiracy case, Detroit, Mich., Sept., 1851.

Is it confined to vulgar criminals, who commit ordinary crimes against society, and shall it be denied to men who are accused of such offenses as those for which Sidney and Russell were beheaded, and Alice Lisle was hung, and Elizabeth Gaunt was burnt alive, and John Bunyan was imprisoned fourteen years, and Baxter was whipped at the cart's tail, and Prynn had his ears cut off? No; the words of the Constitution are all-embracing—

"As broad and general as the casing air."

Judge Jeremiah S. Black, on Trial by Jury.

PERSONAL RIGHTS OF ACTION.

Actio personalis moritur cum persona.

A personal right of action dies with the person.

PIRATES.

A word more about piracy: A pirate is an offender against the law of nations. He is called in the Latin, and by the jurists, the enemy of the human race. Any nation can lay hold of him on the high seas, take him to its country, and punish him. Now, if a ship of war—British, French, Russian, or of any other nation—should meet with a piratical craft, she would capture and condemn it in the courts of her country, and the crew would suffer the punishment of pirates. No one will dispute that proposition. But if such a ship of war had met with the privateer Savannah, even in the very act of capturing the Joseph, would she have captured the Savannah or attempted to arrest her crew as pirates?

James T. Brady, in case of the Savannah Privateers.

POLITICAL REBUILDING.

I have of late seen too much of political rebuilding, not to have observed, that to demolish is not the shortest way to repair.

John P. Curran, in defense of Peter Finnerty.

POWER AND MERCY.

Let the leader of the mutiny on ship-board perish; but if it appears that young men have followed false guidance, and been bound in the despotism of an iron will, order them back to duty, and give them one more chance to show whether they are worthy of life or death. Virginia can thus afford to act. It is one of the chief blessings of power that it can extend mercy to the weak, and the crown jewel of courage is magnanimity to the fallen.

Daniel W. Voorhees, in behalf of John E. Cook, Charleston, Va., Nov. 8, 1859.

POWER AND RIGHT.

Do morals, does reason, does common sense recognize that, because power and right may result in the same consequences, therefore there is no difference in their quality, or in their support, or in their theory? If I am slain by the sword of justice for my crime, or by the dagger of an assassin for my virtue, I am dead, under the stroke of either. But is one as right as the other? An oppressive government may be overthrown by the uprising of the oppressed, and Lord Camden's maxim may be adhered to, that "when oppression begins, resistance becomes a right;" but a government, beneficent and free, may be attacked, may be overthrown by tyranny, by enemies, by mere power.

William M. Evarts, in case of Savannah Privateers.

EXCLUSIVE POWER.

The exclusive nature of every power is to be tested by the character of the acts which Congress is to pass. This is the case with the naturalization laws. The exclusiveness of the power to establish them resulted from their character of uniformity. So here, the exclusiveness results from the character of the right which they are to confer. It is to be exclusive. It is not, indeed, said that Congress shall have the exclusive power but it is said that they shall have power to do a certain act, which, when done, shall be exclusive in its operation. The power to do such an act must be an exclusive power. It can, in the nature of things, be performed only by a single hand. Is not the power of one sovereign to confer *exclusive* rights on a given subject, within a certain territory, inconsistent with a power in another independent sovereign, to confer *exclusive* rights on the same subject, in the same territory? Do not the powers clash?

William Wirt, in Gibbon v. Ogden.

PREMEDITATING.

Premeditating means purpose to kill deliberately formed —meditated upon; and then executed; murder, if in the second degree, means, that the killing was done with malice, and malice means that state of mind in which the man is fatally bent on mischief, utterly regardless of all social duty or moral obligation.

The next thing to which I desire to call your attention is the spirit with which we are to enter upon the investigation of the charges.

Charles W. Smith, for defense, in People v. Hinshaw, Danville, Ind., Sept. 14, 1895.

A FREE PRESS.

The press must be free; it has always been so and much evil has been corrected by it. If Government finds itself annoyed by it, let it examine its own conduct and it will find the cause—let it amend it and it will find the remedy.

Lord Erskine, in defense of Thomas Paine.

BENEFITS OF THE PRESS.

A free and unlicensed press, in the just and legal sense of the expression, has led to all the blessings, both of religion and government, which Great Britain, or any part of the world, at this moment enjoys, and is calculated still further to advance mankind to higher degrees of civilization and happiness. But this freedom, like every other, must be limited to be enjoyed, and, like every human advantage, may be defeated by its abuse.

Lord Erskine, in Williams trial, London, June 24, 1797.

FREEDOM OF THE PRESS.

What then remains? The liberty of the press *only*— that sacred palladium, which no influence, no power, no

minister, no government, which nothing, but the depravity, or folly, or corruption of a jury, can ever destroy.

John P. Curran, Trial of A. H. Rowan, Jan'y 29, 1794.

GOVERNMENT AND A FREE PRESS.

Government in its own estimation has been at all times a system of protection; but a free press has examined and detected its errors and the people have from time to time reformed them.

Lord Erskine, in defense of Thomas Paine.

INFLUENCE OF THE PRESS, ETC.

At home, it has, in truth, produced a gradual revolution in our government. By increasing the number of those who exercise some sort of judgment on public affairs, it has created a substantial democracy, infinitely more important than those democratical forms which have been the subject of so much contest. So that I may venture to say, England has not only in its forms the most democratical government that ever existed in a great country, but in substance has the most democratical government that ever existed in any country: if the most substantial democracy be that state in which the greatest number of men feel an interest and express an opinion upon political questions, and in which the greatest number of judgments and wills concur in influencing public measures.

Sir James Mackintosh, in defense of Jean Peltier, London, Feb'y, 1803.

THE PRESS IN MONARCHICAL GOVERNMENTS.

In great monarchies, the press has always been considered as too formidable an engine to be intrusted to unlicensed individuals. But, in other continental coun-

tries, either by the laws of the State, or by long habits of liberality and toleration in magistrates, a liberty of discussion has been enjoyed, perhaps sufficient enough for most useful purposes. It existed, in fact, where it was not protected by law; and the wise and generous connivance of governments was daily more and more secured by the growing civilization of their subjects. In Holland, in Switzerland, in the imperial towns of Germany, the press was either legally or practically free.

Sir James Mackintosh, in Jean Peltier trial.

THE LIBERTY OF THE PRESS AND THE PEOPLE.

But the facts are too recent in your mind not to show you, that the liberty of the press and the liberty of the people sink and rise together; that the liberty of speaking and the liberty of acting have shared exactly the same fate.

John P. Curran, Trial of Peter Finnerty.

THE PRESS AND NATIONAL SPIRIT.

It is a curious fact that, in the year of the Armada, Queen Elizabeth caused to be printed the first gazettes that ever appeared in England; and I own, when I consider that this mode of rousing a national spirit was then absolutely unexampled, that she could have no assurance of its efficacy from the precedents of former times, I am disposed to regard her having recourse to it as one of the most sagacious experiments; one of the greatest discoveries of political genius, one of the most striking anticipations of future experience that we find in history. I mention it to you to justify the opinion that I have ventured to state of the close connection of our national spirit with our press, even our periodical press.

Sir James Mackintosh, in Jean Peltier trial.

This is the true value of a free press: the more men are enlightened the better will they be qualified to be good subjects of a good government.

Lord Erskine, in defense of James Perry and others, tried for libel, Court of King's Bench, Dec. 9, 1793.

PRESUMPTION AGAINST WRONG DOERS.

Omnia praesumuntur contra spoliatorem.

Every presumption is made against a wrong doer.

PRESUMPTION AS TO ACTS.

Omnia praesumuntur rite et solenniter esse acta.

All acts are presumed to have been rightly and regularly done.

BAR TO LEGAL PROCEEDINGS.

Non potest adduci exceptio ejusdem rei cujus petitur dissolutio.

A matter the validity of which is at issue in legal proceedings cannot be set up as a bar thereto.

PROFESSIONAL SKILL.

Cuilibet in sua arte perito est credendum.

Credence should be given to one skilled in his peculiar profession.

PROMISE AND CAUSE OF ACTION.

Ex nudo pacto non oritur actio.

No cause of action arises from a bare promise.

PROPERTY—ITS RIGHTS AND LIABILITIES.

Sic utere tuo ut alienum non laedas.

Enjoy your own property in such a manner as not to injure that of another person.

EQUAL RIGHTS AND CLAIMS TO PROPERTY.

In aequali jure melior est conditio possidentis.

Where the right is equal, the claim of the party in actual possession shall prevail.

PRIVATE PROPERTY.

A king has a greater right in the goods of his subjects for the public advantage than the proprietors themselves. And when the exigency of the State requires a supply, every man is more obliged to contribute toward it than to satisfy his creditors. The sovereign may discharge a debtor from the obligation of paying, either for a certain time or forever.

Patrick Henry, argument on the right of a state, during the Revolution, to confiscate British debts, Richmond, Va., Nov. 1791.

RIGHT OF PROPERTY.

Nay, more; our great shield of constitutional rights has been, by the fourteenth amendment, lately brightened and polished so that it blazes before the face of injustice as did the shield of Richard Cœur de Lion when he flashed it in the face of the Saracen. It is the eternal principle, new and old, old and new, and I speak with reverence when I say it might be said of it, "Before Adam was, I am," that no citizen's property, to the least pin's worth, shall be taken from him for any public use or private purpose without due compensation. For private purposes not at all. For public purposes only upon compensation.

Benjamin F. Butler, in Elevated R. R. case, New York, Jan'y, 1880.

Describe the nature of a debt: it is an engagement or promise to pay, but it must be for a valuable consideration. If this be clear, was not the title to whatever property they sold us, bad in every sense of the word when the war followed? What can add value to property? Force. Notwithstanding the equity and fairness of the

debt when incurred, if the security of the property received was afterward destroyed, the title has proved defective. Suppose millions were contracted for and received, those millions give you no advantage without force to protect them.

Patrick Henry, on the right of a state, during the Revolution, to confiscate British debts.

RIGHTS TO COMMON PROPERTY.

The law of nature, the law of justice, would say—and it is so expounded by the publicists—that equal rights in the common property shall be enjoyed. Even in a monarchy the king cannot prevent the subjects from enjoying equality in the disposition of the public property. Even in a despotic government this principle is recognized. It was the blood and the money of the whole people (says the learned Grotius, and say all the publicists) which acquired the public property, and therefore it is not the property of the sovereign.

Robert Toombs, in U. S. Senate, on Secession, Jan'y 7, 1861.

RIGHTS TO PERSONAL PROPERTY.

Let me state a case. You own a number of bees. They leave your land, where they hived, and come upon mine, and take refuge in the hollow of a tree, where they deposit their honey. They are your bees, but you cannot come upon my land to take them away; and though they are in my tree, I cannot take the honey. Such a case is reported in our State adjudications. But, suppose that I did take the bees and appropriate the honey to my own use: I might be unjustly indicted for larceny, because I took the property of another, but I am not, consequently, a thief in the eye of the law; the absence of intent to steal would insure my acquittal.

James T. Brady, in case of Savannah Privateers.

TRANSFER OF PROPERTY.

Alienatio rei praefertur juri accrescendi.

Alienation is favored by the law rather than accumulation.

PUBLIC INJURIES.

I know, sir, how well it becomes a liberal man and a Christian to forget and to forgive. As individuals professing a holy religion, it is our bounden duty to forgive injuries done us as individuals. But when to the character of Christian you add the character of a patriot, you are in a different situation. Our mild and holy system of religion inculcates an admirable maxim of forbearance. If your enemy smite one cheek, turn the other to him. But you must stop there. You cannot apply this to your country. As members of a social community, this maxim does not apply to you. When you consider injuries done to your country, your political duty tells you of vengeance. Forgive as a private man, but never forgive public injuries. Observations of this nature are exceedingly unpleasant, but it is my duty to use them.

Patrick Henry, in Jones v. Walker.

PUBLIC SPIRIT AND THE STATE.

Of whatever elements public spirit is composed, it is always and everywhere the chief defensive principle of a state. It is perfectly distinct from courage. Perhaps no nation, certainly no European nation, ever perished from an inferiority of courage. And undoubtedly no considerable nation was ever subdued in which the public affections were sound and vigorous.

It is public spirit which binds together the dispersed courage of individuals and fastens it to the commonwealth. It is, therefore, as I have said, the chief defensive

principle of every country. Of all the stimulants which arouse it into action, the most powerful among us is certainly the press; and it cannot be restrained or weakened without imminent danger that the national spirit may languish, and that the people may act with less zeal and affection for their country in the hour of its danger.

Sir James Mackintosh, trial of Jean Peltier.

PUBLIC SECURITY.

You may not slay him then for the public security, because the public security does not demand the sacrifice. No security, for home or hearth, can be obtained by judicial murder. God will abandon him, who, through cowardly fear, becomes such a murderer.

William H. Seward, in case of People v. Freeman.

THE SAFETY OF THE PUBLIC.

Every consideration must give way to the public safety. That admirable Roman maxim, *salus populi suprema lex,* governed that people in every emergency. It is a maxim that ought to govern every community. It was not peculiar to the Roman people. The impression came from the same source from which we derive our existence. Self-preservation, that great dictate implanted in us by nature, must regulate our conduct; we must have a power to act according to our necessities, and it remains for human judgment to decide what are the proper occasions for the exercise of this power.

Patrick Henry, in Jones v. Walker.

THE PUBLIC WELFARE.

Salus populi suprema lex.

That regard to be had to the public welfare, is the highest law.

PUNISHMENT.

Punishment is good for the guilty, but when administered by courts of law it is administered in a spirit of sorrow and for reformation, not with vindictiveness. Punishment, indeed! Who is to punish the betrayer of female honor? Who is to punish the serpent that, with his slimy track, pursues from early girlhood into budding womanhood the unfortunate girl, separates her from her friends, her family, and leaves her alone and isolated, without father or brother to defend or protect her, and then throws her heartlessly upon the world? Who is to punish him?

James Hughes, Trial of Mary Harris, Washington, D. C., July, 1865.

Sins and crimes have always a small beginning. A man wakes up one morning to find himself hopelessly involved. He has turned over to the bank the accumulations of a lifetime, to repair as far as possible to his fellow man the only wrong he ever did. He leaves his family penniless. Is it punishment the United States wants? Has he not already suffered? The hopes he had when he took to his bosom the wife of his youth—they are wrecked!

Colonel H. C. Jones, in People v. Holland, Charlotte, N. C., May 14, 1895.

Rhadamanthus, judge of hell, punished first, and afterwards instituted an inquiry into the guilt.

Lord Erskine, in defense of William Davies Shipley, the Dean of St. Asaph, Shrewsbury, Eng., Aug. 6, 1784.

THE PURCHASER.

Caveat emptor.

Let the purchaser beware.

AS TO QUARRELS.

It is the law that no man can provoke a fight.

District Attorney John Woodward, in People v. Rainey, Mayville, N. Y., Sept. 27, 1895.

A PROPHECY OF RAILROADS.

It *shall* speed onward, past the forests, still onward, through the gorges of the mountains, over the depths of the valley, till the iron horse, whose bowels are fire, . . . shall be heard thundering through the echoing solitudes of the Rocky Mountains.

William H. Seward, in conspiracy case, Detroit, Mich., 1851.

SUBSEQUENT RATIFICATION.

Omnis ratihabitio retrotrahitur et mandato priori acquiparatur.

A subsequent ratification has a retrospective effect and is equivalent to a prior command.

REASON.

It is agreed by all jurists and is established by the law of this, and every other country, that it is the reason of man which makes him accountable for his actions; and that the deprivation of reason acquits him of crime. This principle is undisputable. . . . In other cases reason is not driven from her seat, but distraction sits down upon it along with her, holds her trembling upon it, and frightens her from her propriety.

Lord Erskine, in defense of James Hadfield, Court of King's Bench, June 26, 1801.

REASON THE SOUL OF LAW.

Cessante ratione legis, cessat ipsa lex.

Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself.

REMEDIES.

Quod remedio destituitur ipsa re valet si culpa absit.

That which is without remedy avails of itself, if there be no fault in the party seeking to enforce it.

REMORSE.

John Randolph once said that in all the vocabulary there was no word like "remorse." Remorse is the mildew that gathers upon actions irretrievable, and gnaws the human life away. Remorse to-day, remorse yesterday, remorse to-morrow, remorse every day, till the grave receives him! He may live, he may know what he is doing. He may take up the duties of an every-day life and discharge them with a mechanical faithfulness. But he can no more enter *into* life than though he lay, as she lies, eaten of the worms. Your verdict may acquit him, but it cannot save him.

Henry M. Cheever, in Underwood trial, Detroit, May, 1879.

REPRESENTATION.

Gentlemen, the representation of our people is the vital principle of their political existence; without it they are dead, or they live only to servitude; without it there are two estates acting upon and against the third, instead of acting in co-operation with it; without it, if the people are oppressed by their judges, where is the tribunal to which their judges can be amenable? without it, if they are trampled upon and plundered by a minister, where is the tribunal to which the offender shall be amenable? without it, where is the ear to hear, or the heart to feel,

or the hand to redress their sufferings? Shall they be found, let me ask you, in the accursed bands of imps and minions that bask in their disgrace, and fatten upon their spoils, and flourish upon their ruin?

John P. Curran, Trial of A. H. Rowan, Jan'y 29, 1794.

REPUTATION.

Reputation is a personal right of the subject, indeed, the most valuable of any, and it is therefore secured by law, and all injuries to it clearly ascertained; whatever slander hurts a man in his trade—subjects him to danger of life, liberty, or loss of property, or tends to render him infamous, is the subject of an action, and in some instances of an indictment.

Lord Erskine, Argument in the Court of King's Bench, Eng., in support of the rights of juries.

Undoubtedly the good fame of every man ought to be under the protection of the laws, as well as his life, and liberty, and property. Good fame is an outwork, that defends them all, and renders them all valuable. The law forbids you to revenge; when it ties up the hands of some, it ought to restrain the tongues of others. The good fame of government is the same; it ought not to be traduced. This is necessary in all governments; and if opinion be support, what takes away this destroys that support; but the liberty of the press is necessary to this government.

Edmund Burke, Speech in the House of Commons, March, 1771, *on the duties of juries.*

REPUTATION AND CHARACTER.

Such a reputation as the defendant here produces is usually the growth of a long lifetime and is seldom the

accompaniment of early youth. Recall in your minds at this moment the friends and neighbors by whom you are surrounded at home. The best and most reliable are those of longest standing. Some you have known for more than a quarter of a century. You have seen their heads whiten as the winters and summers have come and gone. Their characters are good and solid. Little by little, day by day, week by week, month by month, they have built them up as firmly as your beautiful mountains; but it has been the labor of long years.

Daniel W. Voorhees, in defense of H. C. Black.

Dives suffered in hell for the sores of Lazarus, though he had nothing to do with them or their origin.

Joseph H. Choate, in case of Laidlaw v. Sage, New York, June 18, 1895.

PERSONAL RIGHTS.

It took a long time to learn the true nature and office of governments; to discover and secure the principles commonly indicated by such terms as "Magna Charta," the "Bill of Rights," "Habeas Corpus," and the "Right of Trial by Jury;" to found the family home, with its laws of social order, regulating the rights and duties of each member of it, so that the music at the domestic hearth might flow on without discord; the household gods so securely planted that "Though the wind and the rain might enter, the king could not;" to educate noise into music, and music into melody; to infuse into the social code and into the law a spirit of Christian charity, something of the benign temper of the New Testament, so that no man could be persecuted for conscience sake, so that there should be an end of human sacrifice for mere faith or opinion; the smouldering fires

at the foot of the stake put out, now, thank God, as effectually as if all the waters that this night flood the rivers had been poured in upon them. It took a long time to learn that war was a foolish and cruel method of settling international differences as compared with arbitration; to learn that piracy was less profitable than a liberal commerce; that unpaid labor was not as good as well requited toil; that a splenetic old woman, falling into trances and shrieking prophecies, was a fit subject for the asylum rather than to be burned as a witch.

It took a long, long time after the art of printing had been perfected before we learned the priceless value, the sovereign dignity and usefulness of a free press. But these lessons have been taught and learned; taught for the most part by the prophets of our race, men living in advance of their age, and understood only by the succeeding generations. But you have the inheritance.

Joseph Neilson, Address delivered at Saratoga, August 1, 1875.

PERVERSION OF THE RULES OF RIGHT.

Alas! how often the great rules of right—eternal and unchangeable right—are perverted in man's administration of justice! How often the accused should be the accuser! How often the unoffending sufferer bears the punishment due alone to others! What a scene is this in which we are all engaged!

Daniel W. Voorhees, Trial of Mary Harris, Washington, D. C., July, 1865.

THE RENUNCIATION OF RIGHT.

Quilibet potest renunciare juri pro se introducto.

Any one may, at his pleasure, renounce the benefit of a stipulation or other right introduced entirely in his own favor.

THE REVELATION.

Lord Chief Justice Vaughan, to his immortal honor, delivered his opinion as follows:—"We must take off this veil and color of words, which make a show of being something, but are in fact nothing."

Lord Erskine, in defense of the Dean of St. Asaph, Shrewsbury, Eng., Aug. 6, 1784.

A RULE OF LAW AND LOGIC.

Ubi eadem ratio ibi idem jus.

Like reason doth make like law.

SCORN.

The finger of scorn is a more dreadful instrument of torture than the cruel ingenuity of man ever devised.

Daniel W. Voorhees, in defense of H. C. Black.

SEDITION AND CONSPIRACY.

In one case, sedition speaks aloud and walks abroad: the demagogue goes forth—the public eye is upon him—he frets his busy hour upon the stage; but soon either weariness or bribe, or punishment, or disappointment, bears him down, or drives him off, and he appears no more. In the other case, how does the work of sedition go forward? Night after night the muffled rebel steals forth in the dark, and casts another and another brand upon the pile, to which, when the hour of fatal maturity shall arrive, he will apply the torch. If you doubt of the horrid consequence of suppressing the effusion even of individual discontent, look to those enslaved countries where the protection of despotism is supposed to be secured by such restraints. Even the person of the despot there is never in safety.

John P. Curran, Trial of A. H. Rowan, Jan'y 29, 1794.

SELF CRIMINATION.

Nemo tenetur seipsum accusare.

No man can be compelled to criminate himself.

SELF DEFENSE.

The law of self-defense is written in the heart of man more plainly and powerfully than in the pages of libraries. We here place our feet on its solid and eternal foundations. We build upon it a house of refuge for the prisoner, which will withstand the fury of the storm and the malice of his enemies. He was not called upon to retreat. I spurn the doctrine of being driven to the wall or the ditch, that odious doctrine of degradation, danger, and death to the assaulted party. Every inch of ground on which he stood was his own. Who had the right to command him to yield it? The free air around him was his wall, and he who sought to drive him further embraced the peril of his own lawlessness.

Daniel W. Voorhees, in defense of H. C. Black, Frederick City, Md., April 1, 1871.

We place the ground of defense here on the same ground and limited by the same means as the right of personal defense. If a man be assailed, his power to slay the assailant is not limited to the moment when the mortal blow is about to be given; he is not bound to wait till his life is on the very point of being taken; but any movement towards the foul purpose plainly indicated justifies him in the right of self-defense, and in slaying the assailant on the spot.

Edmund M. Stanton, in Sickles' trial.

A man not permitted to defend his brother against conspirators? against assassins, who are crushing out the

very life of their bruised and powerless victim? Why, he who would shape his conduct by such a principle does not deserve to have a brother or a friend. To fight for self is but the result of an honest instinct which we have in common with the brutes. To defend those who are dear to us is the highest exercise of the principle of self-defense. It nourishes all the noblest social qualities, and constitutes the germ of patriotism itself.

S. S. Prentiss, in Wilkinson case.

We may assume, then, that wherever a right is given by the law of God, even though not expressly recognized by human law, and the violation of that right is denounced by the moral law as an offense of aggravated hue, to defend oneself against its violation is an act based upon the principle of self-defense.

John Graham, in Sickles' trial, Feb'y, 1859.

The law of self-defense has always had and ought to have a more liberal construction in this country than in England. Men claim more of a personal independence here: of course they have more to defend. They claim more freedom and license in their actions towards each other, consequently there is greater reason for apprehending personal attack from an enemy. In this country men retain in their own hands a larger portion of their personal rights than in any other; and one will be authorized to presume an intention to exercise and enforce them, upon grounds that, in other countries, would not excite the slightest suspicion. It is the apprehension of impending harm, and not its actual existence, which constitutes the justification for defensive action. If mine enemy point at me an unloaded pistol or a wooden gun, in a

manner calculated to excite in my mind apprehension of immediate, great bodily harm, I am justifiable in taking his life, though it turn out afterwards that I was in no actual danger.

S. S. Prentiss, in the Wilkinson case.

The doctrine has the solemnity of judicial establishment. In Grainger v. The State, the Supreme Court of Tennessee deliberately adjudge, that "if a man, though in no great danger of serious bodily harm, through fear, alarm, or cowardice, kill another, under the impression that great bodily injury is about to be inflicted on him, it is neither manslaughter nor murder, but self-defense." "It is a different thing," say the Supreme Court of the United States, in the Mariana Flora, "to sit in judgment upon the case, after full legal investigations, aided by the regular evidence of all parties, and to draw conclusions at sea, with very imperfect means of ascertaining facts and principles, which ought to direct the judgment."

David Paul Brown, in the Holmes case.

The law of self-defense has existed in all countries and among all nations, and is recorded in every criminal code that has been ever promulgated among civilized nations. It had its origin and was proclaimed, before the advent of our Saviour, in old Rome, from whence the civil law emanated that has been adopted by all the nations of continental Europe. It was adopted at an early period in Great Britain, as part of the common law, and was brought to this country by our ancestors. It is a law above all human laws; it is a law which an all-wise and all-merciful Creator has implanted in every human heart along with those instincts that are common to

the animal creation, intelligent and unintelligent. Human laws cannot ignore it nor obliterate it. It is a law that is implanted in the animal creation from the highest to the lowest. The lordly elephant as he roams through the forests of Africa, when pursued by his hunters and driven to bay will run and fight his pursuers; the vilest worm that crawls in the dust will turn and bite the heel which presses it down and crushes out its life.

Lyman Tremain, E. S. Stokes case, New York, Oct., 1873.

That a man has a right to defend himself from great bodily harm, and to resist a conspiracy to inflict upon him personal violence, if there is reasonable danger, even to the death of the assailant, will not, I presume, be disputed. That *reasonable, well-grounded* apprehension, arising from the actions of others, of immediate violence and injury, is a good and legal excuse for defensive action, proportionate to the apparent impending violence, and sufficient to prevent it, I take to be equally indisputable. . . . So, on the other hand, if I take the life of another, without being aware of any intended violence on his part, it will constitute no excuse for me to prove that he intended an attack upon me.

The apprehension must be reasonable, and its reasonableness may depend upon a variety of circumstances—of time, place and manner, as well as of character. The same appearance of danger would authorize greater apprehension, and of course readier defensive action, at night than in the day-time. An attack upon one in his own house would indicate greater violence, and excuse stronger opposing action, than an attack in the street.

Indication of violence from an individual of known desperate and dangerous character will justify defensive

and preventive action, which would be inexcusable towards a notorious coward. A stranger may reasonably indulge from the appearance or threats of a mob apprehension that would be unpardonable in a citizen surrounded by his friends and neighbors.

S. S. Prentiss, in the Wilkinson case.

The principles of self-defense, which pervade all animated nature, and act towards life the same part that is performed by the external mechanism of the eye towards the delicate sense of vision—affording it, on the approach of danger, at the same time, warning and protection—do not require that action shall be withheld till it can be of no avail. When the rattlesnake gives warning of his fatal purpose, the wary traveler waits not for the poisonous blow, but plants upon his head his armed heel, and crushes out at once "his venom and his strength." When the hunter hears the rustling in the jungle, and beholds the large green eyes of the spotted tiger glaring upon him, he waits not for the deadly spring, but sends at once, through the brain of his crouching enemy the swift and leaden death.

If war was declared against your country by an insulting foe, would you wait till your sleeping cities were wakened by the terrible music of the bursting bomb? till your green fields were trampled by the hoofs of the invader, and made red with the blood of your brethren? No! you would send forth fleets and armies; you would unloose upon the broad ocean your keen falcons; and the thunder of your guns would arouse stern echoes along the hostile coast. Yet this would be but national defense, and authorized by the same great principle of self-protection, which applies no less to individuals than to nations.

S. S. Prentiss, in the Wilkinson case.

THE AWARDS OF SHAME.

If the father accepted a pecuniary award for the shame of his daughter, it would bitterly mock him in all the after years. In what channel of trade would he embark with the proceeds? If he bartered them for lands, his growing meadows, his waving corn, his ripening wheat, and flocks and herds upon his hills would seem to be flourishing over the dishonored tomb of his lost and undone child! His soul would sicken at the sight of his own prosperity springing from such a source. He would turn away and, though filled with the peaceful precepts of our holy religion, he would invoke the death of the seducer and pray for the blessings of Heaven to rest upon the hand that smites him in his career of wickedness.

Daniel W. Voorhees, in defense of H. C. Black.

THE HEIRSHIP OF A SISTER.

Possessio fratris de feodo simplici facit sororem esse haeredem.

The brother's possession of an estate in fee simple makes the sister to be heir.

THE SLANDER OF WOMAN.

Do you remember an occurrence recorded in the New Testament which happened in Galilee 1800 years ago, when the Scribes and Pharisees brought to our Saviour a woman taken in adultery? The crime was charged upon her, and it was said that she was taken in the very act. When called upon again and again to pronounce judgment upon her, what was the answer suggested by a divine compassion for the frailty of poor human nature? "He that is without sin among you, let him first cast a stone at her. And again he stooped down and wrote on the ground. And they which heard it, being convicted by their own conscience, went out one by one, beginning

at the eldest, even unto the last; and Jesus was left alone, and the woman standing in the midst. When Jesus had lifted up himself and saw none but the woman, he said unto her, 'Woman, where are those thine accusers? Hath no man condemned thee?' She said, 'No man, Lord!' And Jesus said unto her, 'Neither do I condemn thee; go and sin no more.'"

This was the example of that first and greatest priest whose teachings the defendant has spent his whole life in professing—it was the example of Him who said, "Judge not, that ye be not judged. For with what judgment ye judge, ye shall be judged: and with what measure ye mete, it shall be measured to you again."

The narrative comes to us in that sacred record which declares, "Blessed are they that mourn, for they shall be comforted," and "For he shall have judgment without mercy that hath shewed no mercy."

Roscoe Conkling, Trial of Parker v. Spencer.

COMMON INTERESTS OF SOCIETY.

We are allied to each other by many ties. We are husbands, fathers, and brothers. We have wives, sisters, and daughters. These vital and precious domestic relations form all mankind into a universal holy alliance. By them you and I are acquainted. We understand each other by their promptings. Let us come close to each other in this discussion. I can have no purpose that ought not to be yours. As a citizen of this great country, desirous of the welfare of the people, desirous of the supremacy of the laws, I can not invoke any results that you ought not also to desire. We are all wedded to the public good. We do not want to destroy the peace and good order of human society. None of us are interested in such a baleful issue. Good or evil to you and yours

is the same to me and mine. A blow at your peace and homes is a blow at all the homes in the land, and an assault upon the humblest family circle puts in peril everything that we all hold dear. We meet, therefore, upon a common level, and in a plain and simple manner I expect to speak to you in this spirit.

Daniel W. Voorhees, in defense of Harry C. Black, Frederick City, Md., April 21, 1871.

A SON BY MARRIAGE.

Haeres legitimus est quem nuptiae demonstrant.

The common law takes him only to be a son whom the marriage proves to be so.

THE INTERMEDDLING SPIRIT.

Sir, it is but the development of the spirit of intermeddling whose children are strife and murder. Cain troubled himself about the sacrifices of Abel, and slew his brother. Most of the wars, contentions, litigations and bloodshed from the beginning of time have been its fruits. The spirit of non-intervention is the very spirit of peace and concord.

The spirit of intervention assumed the form of abolitionism because slavery was odious in name and by association to the Northern mind, and because it was that which most obviously marks the different civilizations of the two sections. The South herself in her earlier and later efforts to rid herself of it, had exposed the weak and offensive parts of slavery to the world.

Stephen A. Douglas, Speech at Springfield, Ill., April 15, 1861.

STARE DECISIS.

The people, in forming the organic law of the government of this State very wisely foresaw that, in its action and progress, questions of interpretation of the settle-

ment of legal principles, and of their application, would frequently arise; and thence the necessity of constituting some tribunal with general appellate and supervisory powers, whose decisions should be final and conclusively settle and declare the law. This was supposed to have been accomplished in the organization of this court. Heretofore this court, under the Constitution, has been looked to by the people as the tribunal of the last resort in the State; and it has hitherto been supposed, that when this court had decided a case upon its merits, such decision not only determined the rights of the parties litigant in that particular case, but that it also settled the principles involved in it, as permanent rules of law, universally applicable in all future cases embracing similar facts, and involving the same or analogous principles. These decisions thus became at once public law, measures of private right, and landmarks of property. They determined the rights of persons and of things. Parties entered into contracts with each other with reference to them, as to the declared and established law; law equally binding upon the courts and the people. But the doctrine recently put forth would at once overturn this whole body of law founded upon the adjudications of this court, built up as it has been by the long continued and arduous labors, grown venerable with years, and interwoven as it has become with the interests, and habits, and the opinions of the people. Under this new doctrine all would again be unsettled—nothing established. Like the ever returning but never ending labors of the fabled Sisyphus, this court, in disregard to the maxim of "stare decisis," would, in each recurring case, have to enter upon its examination and decision as if all were new, without any aid from the experience of the past, or the benefit of any established principle or settled law. Each case with de-

cision being thus limited as law to itself alone, would in turn pass away and be forgotten, leaving behind it no record of principle established, or light to guide, or rule to govern the future.

Luther Bradish. Opinion given as Presiding Judge of Court of Errors, in Hanford v. Archer, Dec., 1842, *at Albany, N. Y.*

THE STATE.

Rex non potest peccare.

The king can do no wrong.

THE STATE AND INDIVIDUAL RIGHTS COMPARED.

Quando jus domini regis et subditi concurrunt, jus regis praeferri debet.

Where the title of a king and the title of a subject concur, the king's title shall be preferred.

PERSONAL RIGHTS AND THE STATE.

Non potest rex gratiam facere cum injuria et damno aliorum.

The king cannot confer a favor on one subject, which occasions a loss and injury to others.

THE AUTHORITY OF THE STATE.

Rex non debet esse sub homine, sed sub deo et sub lege, quia lex facit regem.

The king is under no man, but he is under subjection to God, and to the law, for the law makes the king.

THE STATE NOT BOUND BY ANY STATUTE.

Roy n'est per ascun statute, si il ne soit expressement nosmé.

The king is not bound by any statute, if he be not expressly named to be so bound.

THE PERPETUITY OF THE STATE.

Rex nunquam moritur.

The king never dies.

CONTRADICTORY STATEMENTS.

Allegans contraria non est audiendus.

He is not to be heard, who alleges things contradictory to each other.

THE PROSPERITY AND GREATNESS OF STATES.

The prosperity and greatness of empires ever depended, and must ever depend, upon the use their inhabitants make of their reason in devising wise laws, and the spirit and virtue with which they watch over their just execution; and it is impious to suppose that men, who have made no provision for their own happiness or a security in their attention to the government are to be saved by the interposition of heaven in turning the hearts of their tyrants to protect them.

Lord Erskine, Argument in the Court of King's Bench, Eng., in support of the rights of juries.

THE REPEAL OF STATUTES.

Leges posteriores priores contraias abrogant.

When the provisions of a later statute are opposed to those of an earlier, the earlier statute is considered as repealed.

STRIFE.

Surely, Mr. Henry Oldham must be the knight errant of the age; the Don Quixote of the West; the paragon of modern chivalry. He fights, not from base desire of vengeance, nor from sordid love of gold; not even from patriotism or friendship; but from a higher and a loftier sentiment; from his pure, ardent, disinterested, unsophisticated love of glorious strife. Like Job's war-horse, he

"smelleth the battle afar off," and to the sound of the trumpet he saith, ha! ha! To him

> "There is something of pride in the perilous hour,
> Whate'er be the shape in which death may lower,
> For fame is there, to tell who bleeds,
> And honor's eye on daring deeds."

S. S. Prentiss, in Wilkinson case.

SUNDAY.

Dies dominicus non est juridicus.

Sunday is not a day for judicial or legal proceedings.

SUSPICION AND CONVICTION.

But, on the other hand, reflect that it is not because you suspect a culprit, that you must find him guilty; for the wise policy of the law itself has it, that the more hideous are the circumstances of the offence, so much the more shall Christian charity induce you to be incredulous as to its perpetration.

John P. Curran, Trial of John Costly, London, Feb'y 23, 1804.

SYMPATHY.

But you must remember, gentlemen, that wretched, indeed, would be the man for whom, when convicted of a heinous crime, there would be no eye to drop a tear in sympathy, no heart to break in sorrow, no head to bow down in disgrace and shame.

Cash C. Hadley, for prosecution, in People v. Hinshaw, Danville, Ind.

SYMPATHY AND PUNISHMENT.

If criminals are to escape simply because their punishment will affect the lives of the innocent who are con-

nected with them by bonds of blood, or marriage, or friendship, there would be no punishment for crime. . . . Sympathy is human, and we expect you to sympathize with these relatives and friends. But, gentlemen of the jury, I ask you to go with me and stand at the midnight hour by the body of poor Thurza Hinshaw, lying with her face to the stars, and the snow falling in her hair, and there write your verdict!

District Attorney Otis E. Gulley, in People v. Hinshaw.

HUMAN SYMPATHY AND REPENTANCE.

He is in the hands of friends who abhor the conduct of which he has been guilty. But does that fact debar him of human sympathy? Does the sinful act smite the erring brother with a leprosy which forbids the touch of the hand of affection? Is his voice of repentance and appeal for forgiveness stifled in his mouth? If so, the meek Saviour of the world would have recoiled with horror from Mary Magdalene, and spurned the repentant sorrow of Peter, who denied him. For my client I avow every sympathy. Fallen and undone, broken and ruined as he is by the fall, yet, from the depths of the fearful chasm in which he lies, I hear the common call which the wretched make for sympathy more clearly than if it issued from the loftiest pyramid of wealth and power.

Daniel W. Voorhees, in behalf of John E. Cook, Charleston, Va., Nov. 8, 1859.

TESTIMONY.

I will go through the case fairly and discuss it fully. I will nothing extenuate, nor aught set down in malice. I will base my argument upon the testimony, not as I *would have it*, but *as it is*. I will speak not to the world, but to you, who can correct and hold me in judgment, if I fail to redeem the promises of fairness and candor which

I make. Heaven can witness for me that I desire no fame at the expense of these unfortunate men. I will use no bitter words; I will affect no bitter loathing; I will assail neither man, woman nor child, except under the urgent pressure of duty and necessity. I wish I could be spared the painful task of doing so at all.

J. A. Van Dyke, in conspiracy case, Detroit, Mich., Sept., 1851.

TITLES TO PROPERTY.

Qui prior est tempore, potior est jure.

He has the better title who was first in point of time.

TRAITORS.

The laws of the Persians and Macedonians extended the punishment of a traitor to the extinction of all his kindred. The law subjected the property and life of every man to the most complicated despotism, because the loyalty of every individual of his kindred was as much a matter of wild caprice, as the will of the most arbitrary despot could be.

John P. Curran, Trial of Lady Fitzgerald, Aug. 20, 1798.

TREACHERY.

The Cornish plunderer, intent on the spoil, callous to every touch of humanity, shrouded in darkness, holds out false lights to the tempest-tost vessel, and lures her and her pilot to that shore upon which she must be lost forever—the rock unseen, the ruffian invisible, and nothing apparent, but the treacherous signal of security and repose. So, this prop of the throne, this pillar of the State, this stay of religion, the ornament of the Peerage, this common protector of the people's privileges and of the crown's prerogatives, descends from these high grounds

of character to muffle himself in the gloom of his own base and dark designs; to play before the eyes of the deluded wife and the deceived husband the falsest lights of love to the one, and of friendly and hospitable regards to the other, until she is at length dashed upon that hard bosom where her honor and happiness are wrecked and lost forever. The agonized husband beholds the ruin with those sensations of horror which you can better feel than I can describe. Her upon whom he had embarked all his hopes and all his happiness in this life, the treasure of all his earthly felicities, the rich fund of all his hoarded joys, sunk before his eyes into an abyss of infamy, or if any fragment escape, escaping to solace, to gratify, and to enrich her vile destroyer. Such, gentlemen, is the act upon which you are to pass your judgment; such is the injury upon which you are to set a price, and I lament that the moderation of the pleader has circumscribed within such narrow limits the discretion you are to exercise upon the damages.

Bartholomew Hoar, for plaintiff, in Massy v. the Marquis of Headfort, County Clare, Ire., July 27, 1804.

CONSTRUCTIVE TREASON.

Gracious God! In the nineteenth century to *talk* of constructive treason! Is it possible that in this favored land—this last asylum of liberty—blest with all that can render a nation happy at home and respected abroad—this should be law? No. I stand up as a man to rescue my country from this reproach. I say there is no color for this slander upon our jurisprudence. Had I thought otherwise I should have asked for mercy, not for law. I would have sent my client to the feet of the president, not have brought him, with bold defiance, to confront his accusers, and demand your verdict. He could have had

a *nolle prosequi*. I confirmed him in his resolution not to ask it, by telling him that he was safe without it. Under these circumstances I may claim some respect for my opinion. My opportunities for forming a judgment upon this subject, I am compelled to say, by the strange turn which this cause has taken, are superior to those of the chief justice. I say nothing of the knowledge which long study and extensive practice enabled me to bring to the consideration of the case. I rely upon this: my opinion has not been hastily formed since the commencement of the trial. It is the result of a deliberate examination of all the authorities, of a thorough investigation of the law of treason in all its forms, made at leisure and under a deep sense of a fearful responsibility to my client. It depends upon me whether he should submit himself to your justice, or use with the chief magistrate the intercession of the grand jury, which could not have failed to have been successful. You are charged with his life and honor, because I assured him that the law was a pledge for the security of both. I declared to him that I would stake my own life upon the safety of his; and I declare to you now, that you have as much power to shed the blood of the advocate as to harm the client whom he defends.

William Pinkney, in defense of John Hodges.

PLACE OF TRIAL.

When our forefathers alleged the causes on which they fought King George seven bloody years, they laid down as a marked grievance that he transported American citizens beyond the seas to be tried for offenses committed here. It was one of the prominent causes for which our fathers bled, for which Smallwood's Maryland regiment charged on the battle-fields of the Revolution. They fought for the right of trial where the offense was com-

mitted; the right to be tried by their peers and neighbors; the right to be tried where witnesses are known.

Daniel W. Voorhees, in defense of H. C. Black.

THE JUSTICE OF A TRIAL.

It is a part of the nature of frail man to sin against laws, both human and divine, but God himself secures him a trial before punishment, and tyrants alone repudiate the justice of the Almighty. To deny to an accused person the right to be heard in his defense is preeminently the attribute of the worst ages of brutal despotism. Condemnation without trial and punishment without limitation, is the exact definition to my mind of the most atrocious tyranny that ever feasted on the groans of the captive, or banqueted on the tears of the widow and the fatherless.

Daniel W. Voorhees, Speech on Liberty.

THE OBJECT OF A TRIAL.

The object of a trial is nothing more than the reference of facts to a certain rule of action, and a long recapitulation of them only serves to distract and perplex the memory, without enlightening the judgment, unless the great standard principle by which they are to be measured is fixed and rooted in the mind. When that is done (which I am confident has been done by you) everything worthy of observation falls naturally into its place and the result is safe and certain.

Lord Erskine, Speech against constructive treason, in defense of Lord George Gordon.

THE RIGHT OF TRIAL.

Audi alteram partem.

No man should be condemned unheard.

My Lord, I can touch a bell on my right hand and order the arrest of a citizen of Ohio. I can touch a bell again, and order the imprisonment of a citizen of New York; and no power on earth, except that of the President, can release them. Can the Queen of England do as much?

William H. Seward, Statement to Lord Lyons, the British Minister to the U. S. 1863.

TRIALS OUT OF COURT.

This issue has, for years, been tried in bar-rooms, in street cars, in newspaper officers and in other places where men and gossipers most do congregate. It has been tried *ex parte;* it has been used as a theme to feed the distemper and craze of these times—that craze of suspicion and disbelief which doubts the honesty of every one and everything; which shakes its head, and wrings its hands, and carps and decries continually; that distemper which insists that public and private action on every side is false and venal, and that whatever is, is wrong. To libel the days in which we are living, and to deride the purity and uprightness of those who conduct affairs, is not so generally the fashion that of course hard names must be called and gross insinuations made, when a question arises whether certain written instruments are taxable or not.

Roscoe Conkling, in New York Central R. R. tax case, 1874.

PUBLIC TRIALS.

Our habits are for public trial and investigation, and our liberties will last as long as our trials are public, and not a moment more. We agree in that; we have this love of a public trial from our ancestors.

Rufus Choate, in Dalton divorce case.

TRIFLES.

Was it a trivial and ordinary occasion which raised this storm of indignation in the parliament of that day? Is the ocean ever lashed by the tempest, to waft a feather, or to drown a fly?

John P. Curran, Trial of Judge Johnson, Court of Exchequer, Feb'y 4, 1805.

TROUBLE.

Trouble is a mysterious visitor. It seems to be the unshunnable doom of man. It has been well said that, "Although affliction cometh not forth of the dust, neither doth trouble spring out of the ground; yet man is born unto trouble, as the sparks fly upward." That same great influence which has impressed laws upon all the departments of creation—that same great influence which stretches over the face of nature's green mantle, and again supplants it for the less pleasing dress of winter—that same great influence which has designated the time for the dropping of the leaves and the falling of the sparrows —is the will that guides, and the hand that holds the rod, with which, in this life, we are punished. As we pass from the proceedings in which we are here engaged, may we be permitted to repeat over their result (which I confidently anticipate), as a congratulation to this defendant for the severe ordeal through which he has passed: "Behold, happy is the man whom God correcteth: therefore despise not thou the chastening of the Almighty: for He maketh sore, and bindeth up: He woundeth, and His hands make whole. He shall deliver thee in six troubles: yea, in seven there shall no evil touch thee."

John Graham, in Sickles' trial, Washington, D. C., Feb'y, 1859.

UNCERTAINTY.

With Deference to the Court:—How wonderful and mysterious, gentlemen of the jury, are the vicissitudes of human life. How frail and precarious are our best holds upon human happiness. Man, the boasted lord of creation, is the sport of every wind that blows, of every wave that flows. He appears like the grass of the field, flourishes and is cut down, and withers ere the setting sun; like the dews of the morning he sparkles for a brief moment and is exhaled. There is nothing earthly *certain but uncertainty;* there is nothing *true* but Heaven.

David Paul Brown, in the Holmes case.

UNCERTAINTY AND IMPERFECTION.

Uncertainty and imperfection are stamped upon earth, and upon man, its choicest production, and upon his proudest efforts. Feeble man talking of certainty! His loftiest fabrics crumble beneath the step of time; or are crushed or scattered before an hour's breath. His cultivated intellect, his glowing mind, lie shattered and quenched in a moment's space. No, gentlemen, no such fearful responsibility rests on you; no such unerring certainty is required of you; and he who seeks to grasp or attain such perfection, will only realize how

"Vaunting ambition doth o'erleap itself."

J. A. Van Dyke, in conspiracy case, Detroit, Mich., Sept., 1851.

UNITY.

Upon this principle acted the dying man whose family had been disturbed by domestic contentions. Upon his death-bed he calls his children around him; he orders a bundle of twigs to be brought; he has them untied; he gives to each of them a single twig; he orders them to

be broken—and it is done with facility. He next orders the twigs to be united in a bundle, and orders each of them to try their strength upon it. They shrink from the task as impossible. Thus, my children, continued the old man, it is Union alone that can render you secure against the attempts of your enemies, and preserve you in that state of happiness which I wish you to enjoy.

. *John P. Curran, Trial of the Drogheda Defenders, April* 23, 1794.

USAGE AS AN INTERPRETER.

Optimus interpres rerum usus.

Usage is the best interpeter of things.

UTILITY.

I know of one standard by which to determine the merits of any particular occupation, conduct or employment. That standard is *utility;* whatever is useful is honorable. This standard is simple and practical. It has the object of all worthy actions. The merits of an act are determined by its effects, not its appearance.

John Van Arman, in conspiracy case, Detroit, Mich., Sept., 1851.

VERDICTS AND OATHS.

What are you to found your verdict upon? Upon your oaths; what are they to be founded upon? Upon the oath of the witness: and what is that founded upon? Upon this, and this only, that he does believe that there is an eternal God, an intelligent supreme existence, capable of inflicting eternal punishment for offenses, or conferring eternal compensation, upon man, after he has passed the boundary of the grave.

John P. Curran, Trial of Henry Sheares for treason, Dublin, July, 1798.

THE VILLAIN.

Gentlemen, such a man is of such rare quality that if confronted at last with the proofs of his crime, whose recital has shocked all civilization, he could and he would, as he has done, sneeringly smile in the awful presence of the relics of his victim, torn by his hands from her stiffening body, and exhibit neither passion nor emotion, neither sympathy nor regret for the unfortunate child he had brought to a premature grave. Such a man could well lie in jail awaiting his trial for murder, and clothe his villainy with the mask of a pretended trust in the Jehovah whom he had defied, and play the saint with verses and phrases stolen from Holy Writ. He could listen with grim complacency while his counsel struggled to weave a web of suspicion and accusation around one whom he knew to be innocent, and from the beginning to the end of his trial for the highest crime known to the law, remain the same nerveless, impassible

"Villain, villain, smiling, damned villain."

District Attorney William S. Barnes, in People v. Durant, San Francisco, Cal.

VIRGINIA.

Virginia's past is a poem, her present a problem, her future a prayer with every throb of my heart. Virginia is nearer and dearer to me than anything else in the world.

Captain John A. Wise, in Massey case, Norfolk, Va., June 26, 1895.

VISIONARY CHARACTERS.

It is the character of him who glides down the stream of life in a trance, dreams as he floats along, and sees visions on either shore. Realities exist in the world, no doubt. Practical views are certainly the best. But that

impalpable, airy, and unsubstantial creations of the busy imagination come now and then, and lure the children of men to chase the will-o'-the-wisp over the dangerous morass of life, is as true as that we have our allotted pilgrimage of threescore years and ten.

Daniel W. Voorhees, in defense of H. C. Black.

VOID ACTS.

Quod ab initio non valet in tractu temporis non convalescit.

That which was originally void, does not by lapse of time become valid.

THE WIFE.

The peculiar virtues to be exemplified by the family queen are beautifully stated in scripture—Prov. xxxi:10-31:

Who can find a virtuous woman? for her price is far above rubies.

The heart of her husband doth safely trust in her, so that he shall have no need of spoil.

She will do him good and not evil all the days of her life.

She seeketh wool, and flax, and worketh willingly with her hands.

She is like the merchants' ships; she bringeth her food from afar.

She riseth also while it is yet night, and giveth meat to her household, and a portion to her maidens.

She considereth a field and buyeth it; with the fruit of her hands she planteth a vineyard.

She girdeth her loins with strength, and strengtheneth her arms.

She perceiveth that her merchandise is good; her candle goeth not out by night.

She layeth her hands to the spindle, and her hands hold the distaff.

She stretcheth out her hands to the poor; yea, she reacheth forth her hands to the needy.

She is not afraid of the snow for her household; for all her household are clothed with scarlet.

She maketh herself coverings of tapestry; her clothing is silk and purple.

Her husband is known in the gates when he sitteth among the elders of the land.

She maketh fine linen and selleth it; and delivereth girdles unto the merchant.

Strength and honor are her clothing; and she shall rejoice in time to come.

She openeth her mouth with wisdom; and in her tongue is the law of kindness.

She looketh well to the ways of her household, and eateth not the bread of idleness.

Her children arise up, and call her blessed; her husband also, and he praiseth her.

Many daughters have done virtuously, but thou excellest them all.

Favor is deceitful and beauty is vain; but a woman that feareth the Lord, she shall be praised.

Give her of the fruit of her hands, and let her own works praise her in the gates.

John Graham, in McFarland-Richardson trial, New York, May, 1870.

THE ACCUSED WIFE.

To both of these parties, it is of supreme importance, in the view I take of it, that you should find this young wife, erring, indiscreet, imprudent, forgetful of herself, if it be so, but innocent of the last and greatest crime of a

married woman. I say, to both parties it is important. I cannot deny, of course, gentlemen, that her interest in such a result is perhaps the greater of the two. For her, indeed, it is not at all too much to say, that everything is staked upon the result.

Rufus Choate, in Dalton divorce case.

THE PROTECTION OF THE WIFE.

By the contemplation of law, the wife is always in the husband's presence, always under his wing; and any movement against her person is a movement against his right, and may be resisted as such.

Edwin M. Stanton, in Sickles' trial, Washington, D. C., April 23, 1859.

THE RIGHT TO MAKE A WILL.

The right is conceded by common law throughout civilized countries that a man should dispose of his property as he sees fit. A great American judge has said that old age is solitary, and often the only way in which an old man can command the attention to his infirmities that they merit is this right of disposition. This right cannot be trifled with in a particular case, and yet be preserved, and you, sitting as jurors, are now to pass upon the right.

Wert Dexter, in the Ward will case, Detroit, Mich., Nov., 1875.

THE WITNESS PREPARED FOR TRIAL.

Her story is well delivered—it would be extraordinary if it were not, when it has been so often repeated.

John P. Curran, in the case of Egan v. Kindillan.

WITNESSES AND OATHS.

What is the law of this country? If the witness does not believe in God, or a future state, you cannot swear

him. What swear him upon? Is it upon the book, or the leaf? You might as well swear him by a bramble, or a coin. The ceremony of kissing is only the external symbol, by which man seals himself to the precept, and says, "May God so help me, as I swear the truth." He is then attached to the divinity, upon the condition of telling truth; and he expects mercy from heaven, as he performs his undertaking. But the infidel!—

John P. Curran, Trial of Henry Sheares for high treason, Dublin, July, 1798.

CONTRADICTION OF WITNESSES.

There are three ways of contradicting a witness. First, by assailing his reputation for veracity; and why didn't they attempt that? They dared not do it, for the reason that he stood too high. He told them who he was —where he could be found; and yet not a witness, male or female, with the host of friends that this beautiful murderess has, could be found to assail his reputation for veracity. The second mode of contradicting a witness is by showing that he has made different statements at different times in regard to the same transaction. Was not the statement of Dr. Burroughs clear, consistent, honest? He would say now what he said yesterday, or would say to-morrow. The third mode is by proving a different state of facts by another witness. What witness contradicted him?

U. S. District Attorney Edward C. Carrington, Trial of Mary Harris, Washington, D. C., July, 1865.

There is a time-honored story which is commonly used as an illustration in the trial of cases. It is of a will case, the contest being over its probate. Counsel asked the

proponent who sealed the will and she said the testator did. She had provided the materials for the sealing, but the deceased had placed the wax in the candle and had pressed the seal in her presence. Counsel then turned to the Court and said: "Your worship, it is a wafer." This is the wafer in the case.

District Attorney William S. Barnes, in People v. Durant, San Francisco, Cal., 1895.

DISTRUST OF WITNESSES.

Are they witnesses to be trusted with the report of evidence by words? Are they witnesses to remember words where everything may depend upon the exact expression, upon the order of the language, upon dropping an epithet here and inserting an epithet there, by which the guilt of adultery is confessed? Is this a body of witnesses that are to be trusted to report words, that are the issues of life, with certainty and accuracy? I submit that, on the outside of it, the whole case of confession to be listened to by this jury, is a conclusive and rational distrust which would leave my client in no fear at all of the result. Here is a man that cannot be trusted to carry ten bushels of yellow flat cord across the city for fear that he would steal half of it; who cannot be trusted to take a hat full of uncounted bills to New York. A man who has not honesty enough, or fairness enough, to weigh the hind quarter of an ox—shall he be trusted to weigh out gold dust and dimes, and count the pulses of life? A man not honest enough, a combination not honest enough, to carry a letter without mutilating it into a falsehood, to prove words in which honesty, intelligence and fairness may be entirely omitted. We come, then, to this examination of confession exactly in this state of the case: It is probability, amounting almost to a miracle, that a confession

should be made under any circumstances at all. Confessions themselves are never to be acted upon by the jury, unless they know, upon their oaths, that they have the very words spoken in the sense in which they came. They never can have that assurance if they have not a clear and undoubting confidence in the speaker that reports them. And their case opens, I say, with this: that a moral miracle is to be established on the testimony of confessions, by the evidence of witnesses, as a body, manifestly and apparently undeserving a moment's confidence.

Rufus Choate, in Dalton divorce case.

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